

VERBATIM**RECORD OF TRIAL²**

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

PFC/E-3

(Rank)

Headquarters and
Headquarters Company,
United States Army Garrison
(Unit/Command Name)U.S. Army
(Branch of Service)Fort Myer, VA 22211
(Station or Ship)

By

GENERALCOURT-MARTIAL

Convened by

Commander

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

ON

see below

(Date or Dates of Trial)

Date or Dates of Trial:

23 February 2012, 15-16 March 2012, 24-26 April 2012, 6-8 June 2012, 25 June 2012,
 16-19 July 2012, 28-30 August 2012, 2 October 2012, 12 October 2012, 17-18 October 2012,
 7-8 November 2012, 27 November - 2 December 2012, 5-7 December 2012, 10-11 December 2012,
 8-9 January 2013, 16 January 2013, 26 February - 1 March 2013, 8 March 2013,
 10 April 2013, 7-8 May 2013, 21 May 2013, 3-5 June 2013, 10-12 June 2013, 17-18 June 2013,
 25-28 June 2013, 1-2 July 2013, 8-10 July 2013, 15 July 2013, 18-19 July 2013,
 25-26 July 2013, 28 July - 2 August 2013, 5-9 August 2013, 12-14 August 2013,
 16 August 2013, and 19-21 August 2013.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)² See inside back cover for instructions as to preparation and arrangement.

3. Nothing contained in this filing should be construed in any manner as a concession by PFC Manning or his defense that the originally requested defense witnesses were not relevant. The defense maintains that its requested witnesses should have been produced in person at the Article 32 hearing.



DAVID EDWARD COOMBS
Civilian Defense Counsel



REPLY TO
ATTENTION OF

IMND-MHH-ZA

DEPARTMENT OF THE ARMY
JOINT BASE MYER - HENDERSON HALL
204 LEE AVENUE
FORT MYER, VIRGINIA 22211-1199

16 NOV 11

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Excludable Delay - United States v. PFC Bradley Manning

1. On 16 October 2011, the prosecution submitted a request to exclude the period between the date of this memorandum and 16 December 2011 as excludable delay under RCM 707(c). The reasons for the request were for the prosecution to obtain the final classification review from an Original Classification Authority and to provide the command adequate time to execute OPLAN BRAVO. See Enclosure 1. On 16 November 2011, the defense objected to the government's proposed start date and proposed the Article 32 start on 12 December 2011. Additionally, the defense maintained its previous position that any additional delay should not be excluded under Rule for Courts-Martial (RCM) 707(c). See Enclosure 2. I reviewed both the prosecution's request and its enclosures and the defense's response.

2. This request is:

(b) approved. The Article 32 Investigation will restart no earlier than 16 December 2011. The period between 22 April 2011 and 16 December 2011 is excludable delay under RCM 707(c).

() approved, in part. The Article 32 Investigation will restart no earlier than 12 December 2011. The period between 22 April 2011 and 12 December 2011 is excludable delay under RCM 707(c).

() disapproved. The Article 32 Investigation will restart no earlier than 12 December 2011.

() disapproved. The Article 32 Investigation will restart within thirty days of this memorandum.

CARL R. COFFMAN, JR.
COL, AV
Commanding

- 2 Encls
1. Prosecution Request, 16 Nov 11
2. Defense Response, 16 Nov 11

DISTRIBUTION:

- 1-Article 32 IO
1-Trial Counsel
1-Defense Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JOINT BASE MYER - HENDERSON HALL
204 LEE AVENUE
FORT MYER, VIRGINIA 22211-1199

IMND-MHH-ZA

28SEP2011

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Delay of Article 32 Investigation - United States v. PFC Bradley Manning

1. On 26 September 2011, the prosecution submitted a request to delay restarting the Article 32 Investigation until the completion of Original Classification Authority (OCA) disclosure requests, OCA classification reviews, a final determination of derivative classifications, receipt of signed protective orders from the defense, and properly portion-marked classified documents by the National Security Agency (NSA), or 27 October 2011. *See Enclosure 1.* On 27 September 2011, the defense maintained its previous position that any additional delay should not be excluded under Rule for Courts-Martial (RCM) 707(c). *See Enclosure 2.*

2. This request is:

() approved. The Article 32 Investigation is delayed until the earlier of the completion of the OCA disclosure requests, OCA classification reviews, a final determination of derivative classifications, receipt of signed protective orders from the defense, and properly portion-marked classified documents by the NSA, or 27 October 2011. The period between 22 April 2011 and the restart of the Article 32 Investigation is excludable delay under RCM 707(c). The prosecution is required to provide me an update no later than 25 October 2011.

() disapproved. The Article 32 Investigation will restart within thirty days of this memorandum.

3. After reviewing pertinent portions of the case file and receiving an update of the procedures being followed in this case, it is my understanding that ongoing national security concerns exist in this case, as well as an ongoing law enforcement investigation(s) into PFC Manning and others. In light of the national security concerns and ongoing investigation(s), the prosecution will cautiously proceed with the disclosure of information, but will comply with its obligations under Article 46, UCMJ, RCM 405, RCM 701, RCM 703, and applicable case law. In addition, once the prosecution receives the authority to disclose previously undisclosed information to the defense, it will do so expeditiously to minimize any unnecessary delay.

Coffman
CARL R. COFFMAN, JR.
COL, AV
Commanding

- 2 Encls
1. Prosecution Request, 26 Sep 11
2. Defense Response, 27 Sep 11

DISTRIBUTION:
1-Article 32 IO
1-Trial Counsel
1-Defense Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JOINT BASE MYER - HENDERSON HALL
204 LEE AVENUE
FORT MYER, VIRGINIA 22211-1199

IMND-MHH-ZA

29 AUG 2011

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Delay of Article 32 Investigation - PFC Bradley Manning

1. On 25 August 2011, the prosecution submitted a request to delay restarting the Article 32 Investigation until the United States receives proper authority to release discoverable unclassified evidence and information, as well as consent from all the Original Classification Authorities (OCAs) involved in this case to release discoverable classified evidence and information to the defense. *See Enclosure 1.* On 27 August 2011, the defense maintained its previous position that any additional delay should not be excluded under Rule for Courts-Martial (RCM) 707(c). *See Enclosure 2.*

2. This request is:

(CR) approved. The Article 32 Investigation is delayed until the earlier of the completion of the OCA Disclosure Requests and OCA Classification Reviews, final determination of derivative classifications, final review of the CID case file by the NSA, and authorization is granted to disclose protected unclassified information, or 27 September 2011. The period between 22 April 2011 and the restart of the Article 32 Investigation is excludable delay under RCM 707(c). The prosecution is required to provide me an update no later than 23 September 2011.

() disapproved. The Article 32 Investigation will restart within thirty days of this memorandum.

3. After reviewing pertinent portions of the case file and receiving an update of the procedures being followed in this case, it is my understanding that ongoing national security concerns exist in this case, as well as an ongoing law enforcement investigation(s) into PFC Manning and others. In light of the national security concerns and ongoing investigation(s), the prosecution will cautiously proceed with the disclosure of information, but will comply with its obligations under Article 46, UCMJ, RCM 405, RCM 701, RCM 703, and applicable case law. In addition, once the prosecution receives the authority to disclose previously undisclosed information to the defense, it will do so expeditiously to minimize any unnecessary delay.

- 2 Encls
1. Prosecution Request, 25 August 2011
2. Defense Response, 27 August 2011

Coffman
CARL R. COFFMAN, JR.
COL, AV
Commanding

DISTRIBUTION:
1-Article 32 IO
1-Trial Counsel
1-Defense Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JOINT BASE MYER - HENDERSON HALL
204 LEE AVENUE
FORT MYER, VIRGINIA 22211-1199

IMND-MHI-ZA

26 July 2011

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Delay of Article 32 Investigation - PFC Bradley E. Manning

1. On 22 July 2011, the prosecution submitted a request to delay restarting the Article 32 Investigation until the United States receives proper authority to release discoverable unclassified evidence and information, as well as consent from all the Original Classification Authorities (OCAs) involved in this case to release discoverable classified evidence and information to the defense. See Enclosure 1. On 25 July 2011, the defense renewed its request to order the United States to provide either a substitute for or a summary of the information for the relevant classified documents; to allow the defense to inspect any and all unclassified documents, tangible items, and reports within the government's control; to provide discovery to the defense either previously denied or not provided; and to provide access to all CID and other law enforcement agents who have worked on this case. See Enclosure 2.

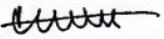
2. This request is:

() approved. The Article 32 Investigation is delayed until the earlier of the completion of the OCA Disclosure Requests and OCA Classification Reviews, and authorization is granted to disclose protected unclassified information, or 27 August 2011. The period between 22 April 2011 and the restart of the Article 32 Investigation is excludable delay under Rule for Courts-Martial (RCM) 707(c). The prosecution is required to provide me an update no later than 25 August 2011.

() disapproved. The Article 32 Investigation will restart within thirty days of this memorandum.

3. After reviewing pertinent portions of the case file and receiving an update of the procedures being followed in this case, it is my understanding that ongoing national security concerns exist in this case, as well as an ongoing law enforcement investigation(s) into PFC Manning and others. In light of the national security concerns and ongoing investigation(s), the prosecution will cautiously proceed with the disclosure of information, but will comply with its obligations under Article 46, UCMJ, RCM 405, RCM 701, RCM 703, and applicable case law. In addition, once the prosecution receives the authority to disclose previously undisclosed information to the defense, it will do so expeditiously to minimize any unnecessary delay.

- 2 Encls
1. Prosecution Request, 25 July 2011
2. Defense Response, 25 July 2011


CARL R. COFFMAN, JR.
COL, AV
Commanding

DISTRIBUTION:
1-Article 32 IO
1-Trial Counsel
1-Defense Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JOINT BASE MYER - HENDERSON HALL
204 LEE AVENUE
FORT MYER, VIRGINIA 22211-1199

IMND-MHII-ZA

26 May 2011

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Delay of Article 32 Investigation - PFC Bradley E. Manning

1. On 22 May 2011, the prosecution submitted a request to delay restarting the Article 32 Investigation until the United States receives proper authority to release discoverable unclassified evidence and information, as well as consent from all the Original Classification Authorities (OCAs) involved in this case to release discoverable classified evidence and information to the defense, whichever is earlier. *See* Enclosure 1. On 24 May 2011, the defense provided a response which maintained its 26 April 2011 position acknowledging the need for additional discovery and noting the potential for further delay for defense to adequately prepare for the Article 32. *See* Enclosure 2.

2. This request is:

(CR) approved. The Article 32 Investigation is delayed until the earlier of the completion of the OCA Disclosure Requests and OCA Classification Reviews, and authorization is granted to disclose protected unclassified information, or 25 June 2011. The period between 22 April 2011 and the restart of the Article 32 Investigation is excludable delay under Rule for Courts-Martial (RCM) 707(c). The prosecution is required to provide me an update no later than 25 June 2011.

() disapproved. The Article 32 Investigation will restart within thirty days of this memorandum.

3. After reviewing pertinent portions of the case file, it is my understanding that ongoing national security concerns exist in this case, as well as an ongoing law enforcement investigation(s) into PFC Manning and others. In light of the national security concerns and ongoing investigation(s), the prosecution will cautiously proceed with the disclosure of information, but will comply with its obligations under Article 46, UCMJ, RCM 405, RCM 701, RCM 703, and applicable case law. In addition, once the prosecution receives the authority to disclose previously undiscovered information to the defense, it will do so expeditiously to minimize any unnecessary delay.

CARL R. COFFMAN, JR.
COL, AV
Commanding

- 2 Encls
1. Prosecution Request, 22 May 11
2. Defense Request, 24 May 11

DISTRIBUTION:
1-Article 32 IO
1-Trial Counsel
1-Defense Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JOINT BASE MYER - HENDERSON HALL
204 LEE AVENUE
FORT MYER, VIRGINIA 22211-1199

IMND-MHH-ZA

29 APR 2011

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Delay of Article 32 Investigation - PFC Bradley E. Manning

1. On 25 April 2011, the prosecution submitted a request to delay restarting the Article 32 Investigation until the United States receives consent from all the Original Classification Authorities (OCAs) involved in this case to release discoverable classified evidence and information to the defense. *See Enclosure 1.* On 26 April 2011, the defense provided a response which acknowledged the need for the classified information and made three specific requests. *See Enclosure 2.*

2. This request is:

(CR) approved. The Article 32 Investigation is delayed until the earlier of the completion of the OCA Disclosure Requests and OCA Classification Reviews or 25 May 2011. The period between 22 April 2011 and the restart of the Article 32 Investigation is excludable delay under Rule for Court-Martial (RCM) 707(c). The prosecution is required to provide me an update no later than 23 May 2011.

() disapproved. The Article 32 Investigation will restart within thirty days of this memorandum.

3. After reviewing pertinent portions of the case file, it is my understanding that ongoing national security concerns exist in this case, as well as an ongoing law enforcement investigation(s) into PFC Manning and others. In light of the national security concerns and ongoing investigation(s), the prosecution will cautiously proceed with the disclosure of information, but will comply with its obligations under Article 46, UCMJ, RCM 405, RCM 701, RCM 703, and applicable case law. In addition, once the prosecution receives the authority to disclose previously undisclosed information to the defense, it will do so expeditiously to minimize any unnecessary delay.

CARLY R. COFFMAN, JR.
COL, AV
Commanding

- 2 Encls
1. Prosecution Request, 25 Apr 11
2. Defense Request, 26 Apr 11

DISTRIBUTION:
1-Article 32 IO
1-Trial Counsel
1-Defense Counsel



REPLY TO
ATTENTION OF

ANJA-CL

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DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

25 April 2011

MEMORANDUM FOR Commander, Joint Base Myer – Henderson Hall, 204 Lee Avenue, Fort Myer, VA 22211-1199

SUBJECT: Request for Delay of Article 32 Investigation – U.S. v. PFC Bradley E. Manning

1. PURPOSE. The prosecution in the above-referenced case requests you delay restarting the Article 32 Investigation until the United States receives consent from all the Original Classification Authorities (OCAs) to release discoverable classified evidence and information to the defense. This consent is necessary in order for the United States to fulfill its discovery obligations under Article 46, UCMJ and the Rules for Courts-Martial (RCM), as well as for the defense to adequately prepare for the Article 32 Investigation.

2. BACKGROUND. Under Executive Orders 12958 and 13526 (as applicable) and Army Regulations 380-5 and 380-67, the United States cannot release classified information originating in a department or agency to parties outside of the executive branch without the consent of the OCA or their delegate. Since 17 June 2010, the United States has been diligently working with all of the departments and agencies that originally classified the information and evidence sought to be disclosed to the defense and the accused. Enclosed are redacted copies of the OCA Disclosure Requests and OCA Classification Review Requests without their enclosures, respectively. However, because of the special circumstances of this case, including the voluminous amounts of classified digital media containing multiple equities and the subsequent discovery of more information helpful to both the United States and the accused, more time is needed for executive branch departments and agencies to obtain the necessary consent from their OCA or authorizing official.

3. EXCLUDABLE DELAY. As the convening authority, you have the authority to grant a reasonable delay under the facts and circumstances of a particular case. Reasons to grant a delay include, for example, the need for time to complete other proceedings related to the case, or time to secure the availability of evidence.

4. REQUEST. The prosecution requests a reasonable delay of restarting the Article 32 Investigation until the earlier of the completion of the OCA Disclosure Requests and OCA Classification Reviews or 25 May 2011. For the reasons stated above, the United States requests the period between 22 April 2011 and 25 May 2011, or earlier, be designated as excludable delay under RCM 707(c). The prosecution will provide you an update no later than 25 May 2011.

5. The point of contact for this memorandum is the undersigned at (202) 685-1975.

ASHDEN FEIN
CPT, JA
Trial Counsel

Encls
as

CF:
Defense Counsel (w/encls)

FOR OFFICIAL USE ONLY

26 April 2011

MEMORANDUM FOR Commander, Joint Base Myer – Henderson Hall, 204 Lee Avenue, Fort Myer, VA 22211-1199

SUBJECT: Government Request for Delay of Article 32 Investigation, United States vs. PFC Bradley E. Manning

1. On 25 April 2011, the Government requested that you delay restarting the Article 32 Investigation until the United States received consent from all of the Original Classification Authorities (OCAs) to release discoverable classified evidence and information to the defense. It appears that no OCA has given such approval since the Defense has yet to receive any classified evidence or information. Without this information, the Defense is unable to adequately prepare for the Article 32.
2. In order to avoid any additional unnecessary delay, the Defense requests that you order the Government to:
 - a. Provide either a substitute for or a summary of the information for relevant classified documents;
 - b. Allow the Defense to inspect any and all unclassified documents, tangible items, and reports within the Government's control, which are material to the Defense's preparation. Rule for Court-Martial (R.C.M.) 405(g)(1)(A), (g)(1)(B), and 701(a). The standard set out in R.C.M. 405 and R.C.M. 701 requires the Government to turn over items that are within the "Government's control." This means that the Trial Counsel, upon Defense request, has an **affirmative obligation** to seek out requested evidence that is in the possession of the Government even if that evidence is not already in the immediate possession of the Trial Counsel. *United States v. Williams*, 50 M.J. 436, 441 (C.A.A.F. 1999). The "prosecutor will be deemed to have knowledge of and access to anything in the possession, custody, or control of any federal agency participating in the same investigation of the defendant." *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989); *Williams*, 50 M.J. at 441. The Defense specifically renews its request for discovery previously either denied or not provided by the Government. See Attachment A – F; AND
 - c. Ensure the Defense has equal access to CID and other law enforcement witnesses by requiring the Trial Counsel to make available any requested witness. R.C.M. 405(g)(1)(B) and 703(a) establishes that the prosecution and defense "shall have equal opportunity to obtain witnesses and evidence." See also Article 46, UCMJ. The Defense has attempted to interview several of the CID agents in this case. On 14 April 2011, the Defense received an email from Deputy Director Daniel T. Andrews of the Computer Crime Investigative Unit, requesting that the Defense coordinate all witness interview requests through MDW Trial Counsel. Specifically, the Defense requests the ability to speak with SA Toni M. Graham, SA Thomas A. Smith, SA Kenneth A. King, SA Charles T. Ames Jr., SA Mark A. Mander, SA Randall A. Bethke, SA

SUBJECT: Government Request for Delay of Article 32 Investigation, United States vs. PFC Bradley E. Manning

Matthew J. Haywood, SA Jennie R. Lisciandri, CW2 Nathan E. Langley, SA Calder L. Robertson III, SA David S. Shaver, and SA Ronald Rock.

3. Due to the limited discovery provided so far, it is likely that the Article 32 will need to be delayed again unless the above information is provided in a timely manner. The Defense requests that any additional delay be credited to the Government.

4. The point of contact for this memorandum is the undersigned at (401) 744-3007.



DAVID EDWARD COOMBS
Civilian Defense Counsel

Encls
As



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
150TH JUDGE ADVOCATE GENERAL DETACHMENT (LSO)
MG ALBERT C. LIEBER USAR CENTER
6901 TELEGRAPH ROAD
ALEXANDRIA, VIRGINIA 22310-3320

ARRC-CAR-LSQ

12 August 2010

MEMORANDUM FOR Commander, U.S. Army, Joint Base Myer-Henderson Hall, Fort Myer,
VA 22211

SUBJECT: Delay of Article 32 Investigation of PFC Bradley Manning

1. On 11 August 2010, the defense submitted a request for delay in the Article 32 investigation pertaining to PFC Manning. The defense requested that the delay be granted until the Rule for Courts-Martial 706 Sanity Board is completed. I recommend that you approve the defense delay.
2. If you approve the defense request, I recommend that you attribute any delay to the defense.
3. Point of contact is the undersigned at 202-616-2250.

Paul R ✓
PAUL R. ALMANZA
LTC, JA, USAR
Investigating Officer



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
DEFENSE COUNSEL ASSISTANCE PROGRAM
ARLINGTON, VIRGINIA 22203



REPLY TO
ATTENTION OF:

JALS-TD

11 August 2010

MEMORANDUM THRU LTC Paul Almanza, 150th Judge Advocate General Detachment,
Legal Support Organization, MG Albert C. Lieber USAR Center, 6901 Telegraph Road,
Alexandria, Virginia 22310

FOR Commander, United States Army Garrison, Joint Base Myer-Henderson Hall, 204 Lee
Avenue, Fort Myer, Virginia 22211-1199

SUBJECT: Delay Request, United States v. Private First Class Bradley Manning,
Headquarters and Headquarters Company, U.S. Army Garrison, Joint Base Myer-Henderson
Hall, Fort Myer, Virginia 22211

1. The Defense requests a delay in the subject court-martial until the inquiry you ordered under the provisions of Rule for Court-Martial 706 is completed. The defense maintains responsibility for this delay because Captain Paul Bouchard initially requested the inquiry from PFC Manning's previous chain of command. This delay would terminate on the date the results of the inquiry are received by PFC Manning's detailed defense counsel.
2. I am the point of contact for any questions or concerns regarding this request. I may be contacted at (703)696-8114 (office), (703)209-8061 (cellular phone), and Thomas.fredrick.hurley@conus.army.mil (email).

Thomas F. Hurley

THOMAS F. HURLEY
MAJ, JA
Defense Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
150TH JUDGE ADVOCATE GENERAL DETACHMENT (LSO)
MG ALBERT C. LIEBER USAR CENTER
6901 TELEGRAPH ROAD
ALEXANDRIA, VIRGINIA 22310-3320

AFRC-MJVA

11 January 2012

MEMORANDUM FOR US v. Manning Article 32(b) Participants

SUBJECT: Excludable Delay

1. The Article 32 hearing in this case concluded on 22 December 2011. On 23 December 2011, I reviewed evidence. Between 24 December 2011 and 2 January 2012 I did not work on this investigation. Of these ten days, six (24-26 December 2011 and 31 December – 2 January 12) were federal holidays or weekend days. I worked on this investigation on 3-6 January 2012 and again from 9-11 January 2012, but not on 7-8 January 2012, which were weekend days.
2. The period between 24 December 2011 and 2 January 2012, and between 7-8 January 2012, is excludable delay under R.C.M. 707(c).
3. POC for this memorandum is the undersigned.



PAUL R. ALMANZA
LTC, JA, USAR
Investigating Officer

Subject: Determinations and Evidence List (UNCLASSIFIED)

To: "Almanza, Paul" <Paul.Almanza@usdoj.gov>
 coombs@armycourtmartialdefense.com,
 Ashden.Fein@jhqnrcr.northcom.mil

Cc: paul.r.bouchard.mil@mail.mil,
 Angel.Overgaard@jhqnrcr.northcom.mil,
 mark.holzer@us.army.mil.
 matthew.kemkes@us.army.mil,
 Jeffrey.Whyte@jhqnrcr.northcom.mil,
 Ashden.Fein@jhqnrcr.northcom.mil,
 JoDean.Morrow@jhqnrcr.northcom.mil,
 melissa.s.santiago@us.army.mil

Date: 12/14/11 14:18

From: paul.r.almanza <paul.r.almanza@us.army.mil>

28 USC 1746 Legislative History.rtf (170kB)

US v. Gunderman (67 MJ 683).rtf (415kB)

Nissho-Iwai v Kline (845 F2d 1300).rtf (496kB)

Hart v Hairston (343 F3d 762) 2003.rtf (432kB)

Classification: UNCLASSIFIED

Counsel -

Three issues, listed below. And in addition to attaching the documents referenced in 1., below, I am also attaching my determinations regarding defense objections to government evidence and my evidence list.

1. Statements under penalty of perjury. I received legal advice from my legal advisor yesterday concerning whether a statement under penalty of perjury constitutes a "sworn statement" permitting it to be considered over defense objection if the witness is not reasonably available. The advice was that in accordance with the text of 28 U.S.C. Section 1746, a declaration under penalty of perjury is legally given "like force and effect" of a sworn statement and for purposes of consideration as an alternative to testimony at the Article 32 may be considered as a sworn statement. LTC Holzer also advised that the discussion to Article 131 (see para. 57c(3)) mentions signing a summarized transcript of Article 32 testimony under penalty of perjury, which indicates that such statements signed outside of an Article 32 hearing but associated with such an investigation can be considered. I also note that the classification review statements at issue all indicate that they are in the "course of justice" as they all indicate the persons making the statements knew they were being prepared for use in this case. As such, I consider these statements to have the same indicia of reliability as sworn statements.

Based on his advice and my review of the indicia of reliability, I intend to consider the statements made under penalty of perjury provided by RADM Kevin Donegan, Mr. Robert Betz, LtGen Robert Schmidle, VADM Robert Harward, Mr. Patrick Kennedy, RADM David Woods, and the person subscribing Bates numbers 00378148-00378175 and 00410623-00410634.

LTC Holzer provided four documents, attached, supporting his advice:

- The legislative history of 28 U.S.C. Section 1746.
- US v. Gunderman, 67 M.J. 683 (A.C.C.A. 2009)
- Nissho-Iwai v. Kline, 845 F.2d 1300 (5th Cir. 1988)
- Hart v. Hairston, 343 F.3d 762 (5th Cir. 2003).

2. Request for reconsideration of closure determination/request for media exclusion and gag order. I recognize that the defense disagrees with my determination that reasonable alternatives to closure, such as thorough voir dire of the panel members and appropriate rulings and instructions by the military judge, would ensure that should this case be referred to trial, PFC Manning would receive a fair trial. However, I do not believe that the defense has shown why these alternatives to closure are insufficient. Additionally, with respect to the defense's reference to "high-ranking officials ... hav[ing] made improper comments concerning PFC Manning's probable guilt and appropriate punishment," in Mr. Coombs's 131621 December 2011 email, I find that thorough voir dire and appropriate rulings and instructions by the military judge will adequately address the risk of unlawful command influence. I therefore deny the defense's request for reconsideration of my closure determination. With respect to the defense's request to exclude the media from discussion of the five topics at issue and to issue a gag order preventing other witnesses from discussing those topics, those requests are denied.

3. Invocation of Article 31/Fifth Amendment rights. The recommendation I received from my legal advisor was that once witnesses invoke their Article 31 or Fifth Amendment rights, those witnesses are not reasonably

INV. OFCR. EXHIBIT 53

available. LTC Holzer also recommended that counsel for the witnesses be contacted to determine whether there are any areas of inquiry that the witness could respond to questioning without invoking their rights. Should it be the case that counsel indicate there are no areas that the witnesses will discuss without invoking their rights, LTC Holzer recommended that the witness be called in lieu of relying on a written statement of their intent to invoke their rights. Accordingly, I intend to call both SFC Adkins and WO1 Balonek as noted below.

Thank you.

LTC Almanza

On 12/14/11, coombs@armycourtmartialdefense.com wrote:

> ***Confidentiality Notice: This transmission, including attachments, may contain confidential attorney-client

information and is intended for the person(s) or company named. If you are not the intended recipient, please notify the sender and delete all copies. Unauthorized disclosure, copying or use of this information may be unlawful and is prohibited.***

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>> ----- Original Message -----

>> Subject: Re: Telephonic 802
>> From: "Almanza, Paul" <Paul.Almanza@usdoj.gov(blockedmailto:Paul.Almanza@usdoj.gov)>
>> Date: Wed, December 14, 2011 1:03 pm
>> To: <coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)>, <paul.r.almanza@us.army.mil(blockedmailto:paul.r.almanza@us.army.mil)>
>> Cc: <matthew.kemkes@us.army.mil(blockedmailto:matthew.kemkes@us.army.mil)>, <paul.r.bouchard.mil@mail.mil>, <JoDean.Morrow@fhqncr.northcom.mil>, <Angel.Overgaard@fhqncr.northcom.mil>, <melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil)>, <Jeffrey.Whyte@fhqncr.northcom.mil(blockedmailto:Jeffrey.Whyte@fhqncr.northcom.mil)>, >> <Mark.Holzer@us.army.mil(blockedmailto:Mark.Holzer@us.army.mil)>, <Ashden.Fein@fhqncr.northcom.mil(blockedmailto:Ashden.Fein@fhqncr.northcom.mil)>

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> >

>> Counsel -

>
>

>> Would you be available for a telephone conference at 1500 today? I'd like to discuss the issues concerning witness availability mentioned below.

>
>

>> I am working on the other outstanding items.

>
>

>> LTC Almanza

>
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>
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>
>

>> From: coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com) <coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)>
>> To: Almanza, Paul; paul.r.almanza@us.army.mil(blockedmailto:paul.r.almanza@us.army.mil)> <paul.r.almanza@us.army.mil(blockedmailto:paul.r.almanza@us.army.mil)>
>> Cc: Matthew Kemkes <matthew.kemkes@us.army.mil(blockedmailto:matthew.kemkes@us.army.mil)>; paul.r.bouchard.mil@mail.mil(blockedmailto:paul.r.bouchard.mil@mail.mil) <paul.r.bouchard.mil@mail.mil(blockedmailto:paul.r.bouchard.mil@mail.mil)>; Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA <JoDean.Morrow@fhqncr.northcom.mil>; Overgaard, Angel M, CPT USA JFHQ-NCR/MDW SJA <Angel.Overgaard@fhqncr.northcom.mil(blockedmailto:Angel.Overgaard@fhqncr.northcom.mil)>; melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil)>; Whyte, Jeffrey H, CPT USA JFHQ-NCR/MDW SJA <Jeffrey.Whyte@fhqncr.northcom.mil(blockedmailto:Jeffrey.Whyte@fhqncr.northcom.mil)>; Holzer, Mark LTC

MIL USA OTJAG <mark.holzer@us.army.mil(blockedmailto:mark.holzer@us.army.mil)>; Ashden Fein <Ashden.Fein@ifhqncr.northcom.mil(blockedmailto:Ashden.Fein@ifhqncr.northcom.mil)>
>> Sent: Wed Dec 14 12:34:32 2011
>> Subject: RE: Telephonic 802

>>
>>
>
>>
>> LTC Almanza,
>
>>
>>
>
>>

>> The defense objects to having the listed OCA witnesses testify by telephone. The defense's ability to question these witnesses will be frustrated by not having them in person. The defense intends to discuss classified information with each witness. In order to adequately do so, the defense will need to hand classified information each individual witness. As such, having the witness testify by telephone will not ensure a thorough and impartial Article 32 hearing.

>
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>>

>> Additionally, the defense objects to each of the government's requests below concerning CPT Keay, SGT Padgett, SFC Adkins, WO1 Balonek, and Inmate Whitfield. The government has had more than enough time to ensure these witnesses were available to testify. The fact that a particular witness has made alternative plans should not be held against the defense given our timely request for the witness.

>
>>
>>
>
>>
>> Best,

>
>>
>> David
>
>>
>>
>
>>

>> David E. Coombs, Esq.
>> Law Office of David E. Coombs
>> 11 South Angell Street, #317
>> Providence, RI 02906
>
>>

>> Toll Free: 1-800-588-4156

>
>>
>> Local: (508) 689-4616
>
>>

>> Fax: (508) 689-9282

>> coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)

>
>>
>> www.armycourtmartialdefense.com(blockedhttp://www.armycourtmartialdefense.com/)

>
>>

> >

>

> >

>

> >

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>

> >

>

> >

>

> >

>>>

>>> ----- Original Message -----

>>> Subject: RE: Telephonic 802

>>> From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
>>> <Ashden.Fein@jfhqncr.northcom.mil>
>>> Date: Wed, December 14, 2011 10:36 am
>>> To: "Almanza, Paul" <Paul.Almanza@usdoj.gov>,
>>> <coombs@armycourtmartialdefense.com>,
<paul.r.almanza@us.army.mil>

>>> Cc: "Matthew kemkes" <matthew.kemkes@us.army.mil>,
>>> <paul.r.bouchard.mil@mail.mil>, "Morrow III, JoDean, CPT USA
>>> JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>
([blockedmailto:JoDean.Morrow@jfhqncr.northcom.mil](mailto:JoDean.Morrow@jfhqncr.northcom.mil)), "Overgaard,

>>> <Angel.Overgaard@jfhqncr.northcom.mil>,
>>> <melissa.s.santiago@us.army.mil>, "Whyte, Jeffrey H. CPT USA

>>> JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>
([blockedmailto:Jeffrey.Whyte@jfhqncr.northcom.mil](mailto:Jeffrey.Whyte@jfhqncr.northcom.mil)), "Holzer, Mark

>>> <LTC MIL USA OTJAG" <mark.holzer@us.army.mil>([blockedmailto:mark.holzer@us.army.mil](mailto:mark.holzer@us.army.mil))>

>>>

>>> Sir,

>>>

>>> Good morning. The government was without email from at least 1937 last night
>>> until 1030 this morning. This email serves as an update to your witness
>>> request and other administrative issues up to 1937 last night. Email is
>>> sporadic but we should be able to continue communicating through email.

>>>

>>> Witness List. The government is working to finalize whether witnesses will
>>> be available for telephonic testimony. We do not anticipate any issues with
>>> telephonic testimony of the witnesses you ruled "not available" except the
>>> below witnesses.

>>> 1. We do not know whether the different original classification authorities
>>> (OCAs) will be available for telephonic testimony and will likely not know
>>> until 1300 on 15 Dec 11.

>>> 2. The United States requests CPT Keay be deemed not reasonably available
>>> and testify via telephone. CPT Keay is currently scheduled for block leave
>>> during the hearing and already has airline tickets and other non-refundable
>>> reservations. We are working to obtain copies of his leave form and other
>>> travel documents.

>>> 3. The United States requests SGT Padgett be deemed not reasonably available

>>> and testify via telephone. SGT Padgett just returned from a five month TDY
 >>> for MOS re-classification training (AIT). He just returned to the unit and
 >>> we expect more information from the command in the next few hours. I will
 >>> forward the commander's decision about his physical presence and reason, once
 >>> we receive it.
 >>> 4. The United States requests Mr. Adrian Lamo's be deemed reasonably
 >>> available. Mr. Lamo is diagnosed with asperger syndrome. This is a high
 >>> functioning form of autism. Based on his medical condition, he will not
 >>> likely be able to relay meaningful testimony over the telephone that should
 >>> assist you in your investigation, and allow the prosecution and defense to
 >>> adequately question him. Additionally, the witness would likely be
 >>> non-responsive if testifying over the telephone. Rather than rule him
 >>> reasonably unavailable but available for telephonic testimony, the United
 >>> States requests the ability to produce him for in-person testimony, if he is
 >>> willing to participate in the hearing.
 >>> 5. The United States requests SFC Adkins be deemed not reasonably available
 >>> based on the previously provided memorandum stating he intends to invoke his
 >>> rights under Article 31. "A witness who is unavailable under Mil. R. Evid.
 >>> 804(a)(1)-(6), is not 'reasonably available.'" RCM 405(g)(1)(A). MRE
 >>> 804(a)(1) incorporates in the claim of privilege against self-incrimination.
 >>> 6. WO1 Balonek is not available for telephonic testimony based on the
 >>> attached email stating he intends to invoke his rights under Article 31. "A
 >>> witness who is unavailable under Mil. R. Evid. 804(a)(1)-(6), is not
 >>> 'reasonably available.'" RCM 405(g)(1)(A). MRE 804(a)(1) incorporates in
 >>> the claim of privilege against self-incrimination.
 >>> 7. As of three months ago, Inmate Whitfield was a represented party and the
 >>> United States is working to contact his civilian defense counsel to first
 >>> determine whether he is still a represented party, and then to request Inmate
 >>> Whitfield's cooperation with your order. The confinement facility is prepared
 >>> to provide him access to a telephone for testimony.
 >>>
 >>> v/r
 >>> CPT Fein
 >>>
 >>> -----Original Message-----
 >>> From: Almanza, Paul [mailto:Paul.Almanza@usdoj.gov]
 >>> Sent: Wednesday, December 14, 2011 9:08 AM
 >>> To: coombs@armycourtmartialdefense.com([mailto:coombs@armycourtmartialdefense.com]);
 paul.r.almanza@us.army.mil([mailto:paul.r.almanza@us.army.mil])
 >>> Cc: Matthew kemkes; paul.r.bouchard.mil@mail.mil([mailto:paul.r.bouchard.mil@mail.mil]); Morrow
 III, JoDean, CPT USA
 >>> JFHQ-NCR/MDW SJA; Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA;
 >>> melissa.s.santiago@us.army.mil([mailto:melissa.s.santiago@us.army.mil]); Whyte, Jeffrey H. CPT
 USA JFHQ-NCR/MDW SJA;
 >>> Fein, Ashden CPT USA JFHQ-NCR/MDW SJA; Holzer, Mark LTC MIL USA OTJAG
 >>> Subject: Re: Telephonic 802
 >>>
 >>> Counsel -
 >>>
 >>> This provides notice that I intend to ask my legal advisor whether SFC Adkin
 >>> should be produced at the hearing in light of his memorandum indicating that
 >>> he intends to invoke his Article 31 and 5th Amendment rights and, if so,
 >>> whether he may be ordered to testify given that the matter cited in his
 >>> memorandum is an administrative one.
 >>>
 >>> Thank you.
 >>>
 >>> LTC Almanza
 >>>
 >>>
 >>> _____
 >>> From: coombs@armycourtmartialdefense.com([mailto:coombs@armycourtmartialdefense.com])

<coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)>
 >>> To: Almanza, Paul; Almanza, Paul R LTC RES USAR USAR
 >>> <paul.r.almanza@us.army.mil(blockedmailto:paul.r.almanza@us.army.mil)>
 >>> Cc: Matthew kemkes <matthew.kemkes@us.army.mil(blockedmailto:matthew.kemkes@us.army.mil)>;
 paul.r.bouchard.mil@mail.mil(blockedmailto:paul.r.bouchard.mil@mail.mil)
 >>> <paul.r.bouchard.mil@mail.mil(blockedmailto:paul.r.bouchard.mil@mail.mil)>; Morrow III, JoDean, CPT
 USA JFHQ-NCR/MDW SJA
 >>> <JoDean.Morrow@fhqncr.northcom.mil(blockedmailto:JoDean.Morrow@fhqncr.northcom.mil)>;
 Overgaard, Angel M. CPT USA
 >>> <JFHQ-NCR/MDW SJA <Angel.Overgaard@fhqncr.northcom.mil
 (blockedmailto:Angel.Overgaard@fhqncr.northcom.mil)>;
 >>> melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil); Whyte,
 <melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil)>; Whyte,
 >>> Jeffrey H. CPT USA JFHQ-NCR/MDW SJA <Jeffrey.Whyte@fhqncr.northcom.mil
 (blockedmailto:Jeffrey.Whyte@fhqncr.northcom.mil)>;
 >>> Ashden Fein <Ashden.Fein@fhqncr.northcom.mil(blockedmailto:Ashden.Fein@fhqncr.northcom.mil)>
 >>> Sent: Tue Dec 13 08:37:31 2011
 >>> Subject: RE: Telephonic 802
 >>>
 >>>
 >>> LTC Almanza,
 >>>
 >>> The defense requests that SFC Adkins be produced at the Article 32 hearing.
 >>> The basis that SFC Adkins is attempting to avoid testifying is not a proper
 >>> invocation of his Article 31 rights or his 5th Amendment right against
 >>> self-incrimination. The Fifth Amendment protections only apply to in a
 >>> custodial interrogation and when the individual questioning is law
 >>> enforcement. Article 31 applies only when the military questioner is acting
 >>> or could reasonably be considered as acting in an official law enforcement or
 >>> disciplinary capacity. United States v. Bell, 44 M.J. 403 (C.A.A.F. 1996)
 >>> (Article 31 requirement for warnings does not apply at trial or Article 32
 >>> investigation). SFC Adkins is attempting to invoke his Article 31 rights in
 >>> a noncriminal matter (administrative reduction) and when he is not the
 >>> subject of any questioning designed to elicit incriminating statements. He
 >>> should therefore be ordered to testify.
 >>>
 >>>
 >>> In the alternative, the defense requests that the government provide a grant
 >>> of testimonial immunity to SFC Adkins under R.C.M. 704(e). SFC Adkins is a
 >>> material witness at the Article 32 hearing. The fact that he is appealing
 >>> his reduction in rank should not provide him with the ability to avoid
 >>> testifying.
 >>>
 >>> Best,
 >>> David
 >>>
 >>> David E. Coombs, Esq.
 >>> Law Office of David E. Coombs
 >>> 11 South Angell Street, #317
 >>> Providence, RI 02906
 >>> Toll Free: 1-800-588-4156
 >>> Local: (508) 689-4616
 >>> Fax: (508) 689-9282
 >>> coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)
 >>> www.armycourtmartialdefense.com(blockedhttp://www.armycourtmartialdefense.com/)
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 >>> notify the sender and delete all copies. Unauthorized disclosure, copying or
 >>> use of this information may be unlawful and is prohibited.***
 >>>
 >>>

> > >
 > > ----- Original Message -----
 > > Subject: RE: Telephonic 802
 > > From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
 > > <Ashden.Fein@jfhqncr.northcom.mil(blockedmailto:Ashden.Fein@jfhqncr.northcom.mil)>
 > > Date: Mon, December 12, 2011 10:51 pm
 > > To: <coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)>, Almanza, Paul"
 > > <Paul.Almanza@usdoj.gov(blockedmailto:Paul.Almanza@usdoj.gov)>, "Almanza, Paul R LTC RES USAR USARC"
 > > <paul.r.almanza@us.army.mil(blockedmailto:paul.r.almanza@us.army.mil)>
 > > Cc: "Matthew kemkes" <matthew.kemkes@us.army.mil(blockedmailto:matthew.kemkes@us.army.mil)>, <paul.r.bouchard.mil@mail.mil(blockedmailto:paul.r.bouchard.mil@mail.mil)>, "Morrow III, JoDean, CPT USA"
 > > <JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil
 (blockedmailto:JoDean.Morrow@jfhqncr.northcom.mil)>, "Overgaard,
 > > Angel M. CPT USA JFHQ-NCR/MDW SJA"
 > > <Angel.Overgaard@jfhqncr.northcom.mil(blockedmailto:Angel.Overgaard@jfhqncr.northcom.mil)>, <melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil)>, "Whyte, Jeffrey H. CPT USA
 > > <JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil
 (blockedmailto:Jeffrey.Whyte@jfhqncr.northcom.mil)>
 > >
 > > Sir,
 > >
 > > As for those witnesses you determined to be reasonably available, the
 > > United States agrees with the defense's interpretation.
 > >
 > > Based on the attached memorandum, SFC Adkins is invoking his Article
 > > 31 rights. The United States will produce him if you determine his presence
 > > is required to invoke his rights. Otherwise, all the government's offered
 > > witnesses are available and the United States will check on the status of CPT
 > > Kear and SGT Padgett (defense offered witnesses) tomorrow morning. DTS should
 > > not be an issue, if they are available.
 > >
 > > As for any witness designated as not reasonably available, the
 > > government requests to call them as telephonic witnesses, if you are not
 > > considering their sworn statements.
 > >
 > > The United States joins the defense in the request for you to
 > > annotate for the record which witnesses you deemed not relevant or relevant
 > > but cumulative.
 > >
 > > Finally, as we discussed earlier today during our conference call,
 > > the United States stands ready to coordinate the travel for those witnesses
 > > that are reasonably available or alternative testimony of each witness that
 > > you deem relevant and not cumulative, from both the government's and
 > > defense's witness lists.
 > >
 > > Thank you.
 > >
 > > v/r
 > > CPT Fein
 > >
 > > -----Original Message-----
 > > From: coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)
 > > [mailto:coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)]
 > > Sent: Monday, December 12, 2011 9:42 PM
 > > To: Almanza, Paul; Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
 > > Cc: Matthew kemkes; paul.r.bouchard.mil@mail.mil(blockedmailto:paul.r.bouchard.mil@mail.mil); Morrow
 III, JoDean,
 > > CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA;

>>> melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil); Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA
>>> Subject: RE: Telephonic 802
>>>
>>> LTC Almanza,
>>>
>>> The defense received your list of intended witnesses. It is the
>>> defense's understanding that the listed witnesses are those that you would
>>> want to hear from during the hearing. If a specific witness is listed as
>>> reasonably available by you, then this witness is to be produced as a live
>>> witness. The defense is unsure of your intent regarding a witness that is
>>> on your list but is listed as "not reasonably available." It appears that you
>>> are deferring to the government regarding whether these witnesses will be
>>> produced and in what manner. The defense believes that this determination
>>> must be made by you and not the government.
>>>
>>> If the defense's reading of your memorandum is correct, it appears
>>> that only 12 witnesses will be called at the Article 32 (one of which will
>>> invoke his 5th Amendment Right). The remaining witnesses, under the above
>>> understanding, will testify if at all, at the government's discretion.
>>>
>>> With regards to the witnesses not listed by you, the defense requests
>>> a ruling regarding whether these witnesses have been deemed as either not
>>> relevant, cumulative or not reasonably available. Under R.C.M. 405(g)(2)(D),
>>> the defense objects to the determination that its listed witnesses are either
>>> not relevant, cumulative or not reasonably available.
>>>
>>> Best,
>>> David
>>>
>>> David E. Coombs, Esq.
>>> Law Office of David E. Coombs
>>> 11 South Angell Street, #317
>>> Providence, RI 02906
>>> Toll Free: 1-800-588-4156
>>> Local: (508) 689-4616
>>> Fax: (508) 689-9282
>>> coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)
>>> www.armycourtmartialdefense.com(blockedhttp://www.armycourtmartialdefense.com/)
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>>> person(s) or company named. If you are not the intended recipient, please
>>> notify the sender and delete all copies. Unauthorized disclosure, copying or
>>> use of this information may be unlawful and is prohibited.***
>>>
>>>
>>>
>>> ----- Original Message -----
>>> Subject: Re: Telephonic 802
>>> From: "Almanza, Paul" <Paul.Almanza@usdoj.gov(blockedmailto:Paul.Almanza@usdoj.gov)>
>>> Date: Mon, December 12, 2011 9:14 pm
>>> To: <Ashden.Fein@fhqnrc.northcom.mil(blockedmailto:Ashden.Fein@fhqnrc.northcom.mil)>,
>>> <coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)>
>>> Cc: <matthew.kemkes@us.army.mil(blockedmailto:matthew.kemkes@us.army.mil)>,
<paul.r.bouchard.mil@mail.mil(blockedmailto:paul.r.bouchard.mil@mail.mil)>,
>>> <JoDean.Morrow@fhqnrc.northcom.mil(blockedmailto:JoDean.Morrow@fhqnrc.northcom.mil)>,
>>> <Angel.Overgaard@fhqnrc.northcom.mil(blockedmailto:Angel.Overgaard@fhqnrc.northcom.mil)>,
>>> <melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil)>,
>>> <Jeffrey.Whyte@fhqnrc.northcom.mil(blockedmailto:Jeffrey.Whyte@fhqnrc.northcom.mil)>
>>>
>>> All -
>>>

>>> I just sent the witness list I mentioned in my conversation with Mr.
 >>> Coombs and CPT Fein from my ako account (paul.r.almanza@us.army.mil
 (blockedmailto:paul.r.almanza@us.army.mil)). As I
 >>> haven't yet received it on my DOJ email to which I sent it as a cc, just
 >>> wanted to let you know it's on its way.
 >>>
 >>> Also, counsel, I intend to ask my legal advisor for advice on whether
 >>> a statement under penalty of perjury should be considered a "sworn statement"
 >>> that can be considered by the IO over defense objection if the witness is not
 >>> reasonably available.
 >>>
 >>> Thank you.
 >>>
 >>> LTC Almanza
 >>>
 >>> ----- Original Message -----
 >>> From: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
 >>> <Ashden.Fein@jfhqncr.northcom.mil(blockedmailto:Ashden.Fein@jfhqncr.northcom.mil)>
 >>> To: coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com);
 >>> <coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)>;
 Almanza, Paul
 >>> Cc: Matthew kemkes <matthew.kemkes@us.army.mil(blockedmailto:matthew.kemkes@us.army.mil)>;
 >>> paul.r.bouchard.mil@mail.mil(blockedmailto:paul.r.bouchard.mil@mail.mil) <paul.r.bouchard.mil@mail.mil
 (blockedmailto:paul.r.bouchard.mil@mail.mil)>; Morrow III,
 >>> JoDean, CPT USA JFHQ-NCR/MDW SJA <JoDean.Morrow@jfhqncr.northcom.mil
 (blockedmailto:JoDean.Morrow@jfhqncr.northcom.mil)>;
 >>> Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA
 >>> <Angel.Overgaard@jfhqncr.northcom.mil(blockedmailto:Angel.Overgaard@jfhqncr.northcom.mil)>;
 melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil)
 >>> <melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil)>; Whyte, Jeffrey H. CPT
 USA JFHQ-NCR/MDW SJA
 >>> <Jeffrey.Whyte@jfhqncr.northcom.mil(blockedmailto:Jeffrey.Whyte@jfhqncr.northcom.mil)>
 >>> Sent: Mon Dec 12 21:01:15 2011
 >>> Subject: RE: Telephonic 802
 >>>
 >>> Sir,
 >>>
 >>> The United States maintains its previously stated position on both
 >>> the validity of the sworn statements and keeping the hearing open to the
 >>> public in order to reduce public scrutiny and ensure transparency of the
 >>> military justice process.
 >>>
 >>> Our systems were down tonight, and we will send a copy of the email
 >>> to the defense referenced tomorrow.
 >>>
 >>> v/r
 >>> CPT Fein
 >>>
 >>> -----Original Message-----
 >>> From: coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)
 >>> [mailto:coombs@armycourtmartialdefense.com(blockedmailto:coombs@armycourtmartialdefense.com)]
 >>> Sent: Monday, December 12, 2011 5:44 PM
 >>> To: Almanza, Paul; Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
 >>> Cc: Matthew kemkes; paul.r.bouchard.mil@mail.mil(blockedmailto:paul.r.bouchard.mil@mail.mil); Morrow
 III, JoDean,
 >>> <CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA;
 >>> melissa.s.santiago@us.army.mil(blockedmailto:melissa.s.santiago@us.army.mil)
 >>> Subject: RE: Telephonic 802
 >>>
 >>> LTC Almanza,
 >>>

>>> 28 U.S.C. 1746 Statements

>>> In response to your request for us to look at 2010 WL 2265833 and
>>> 2002 WL 243445, the defense's position is that both cases are inapplicable to
>>> the situation at hand. In Faison, the IO found that TRD was unavailable and
>>> that her videotaped statement was sworn. Such a determination was appropriate
>>> given the fact TRD responded to questions indicating that she knew the
>>> difference between the truth and a lie and promised to tell the truth. As the
>>> IO and the AFCCA correctly concluded, this colloquy more than adequately
>>> satisfied the oath/affirmation requirement so as to make TRD's videotaped
>>> statement a sworn statement under R.C.M. 405(g)(4)(B)(i). In the instant
>>> case, unsworn statements under 28 U.S.C. § 1746 do not share any of the same
>>> hallmarks of a sworn statement. The statements are not made in front of
>>> anyone and the statements are not similar, in that they are not made in front
>>> of a person authorized to administer oaths.

>>>
>>> Likewise, Elsevier dealt with a videotaped interview that was done
>>> without a formal swearing or oath. However, it qualified as a sworn statement
>>> in accordance with R.C.M. 405(g)(4)(B)(i) since on a later date the
>>> unavailable witness did swear to the truth of the statements contained
>>> therein. The IO correctly found this to be a sworn adoption of the videotaped
>>> interviews that, pursuant to United States v. Wood, 36 M.J. 651 (A.C.M.R.
>>> 1992), rendered it admissible. None of the individuals who provided the
>>> unsworn statements under 28 U.S.C. § 1746 have subsequently provided a sworn
>>> adoption of their unsworn statement in accordance with R.C.M.
>>> 405(g)(4)(B)(i).

>>>
>>> An unsworn statement provided under 28 U.S.C. § 1746 does not qualify
>>> as a sworn statement. In order for an unsworn statement provided under 28
>>> U.S.C. § 1746 to be admissible, it must be subscribed and signed "in a
>>> judicial proceeding or course of justice" at the Article 32 hearing. A plain
>>> reading of 28 U.S.C Section 1746 and R.C.M. 405(h)(1)(A) undercuts any
>>> argument to the contrary.

>>>
>>> Closure

>>> While the Defense acknowledges the general right of the public to
>>> attend criminal proceedings, such right is not unfettered and must be
>>> balanced by the right of the accused to a fair trial. Specifically, the
>>> Defense maintains that the public's interest in five discrete pieces of
>>> evidence, which may or may not be admissible if the case proceeds to trial,
>>> is not sufficiently overwhelming to override the accused's right to a fair
>>> trial. It is important to note that all of the cases in this area involve the
>>> government attempting to close the Article 32 hearing while the accused was
>>> attempting to assert the right to a public hearing. Here, it is the accused
>>> who is asserting his right to close parts of the hearing in order to preserve
>>> the integrity of the judicial process and to ensure his right to a fair
>>> trial. The Government can point to no harm to its case based upon the
>>> defense's request. Instead, the discussion seems to be centered on subsequent
>>> steps that a military judge can take to cure any error at the Article 32.
>>> This analysis is misguided given the relative ease of avoiding the harm and
>>> the limited nature of the defense's request. Certainly, to the extent that we
>>> are going to err, we should err on the side of caution. In this instance,
>>> that would mean closing the hearing during those limited times requested by
>>> the defense.

>>>

>>>

>>> AIT Training

>>> The defense has attached the referenced email regarding the IT

>>> training.

>>>

>>> Best,

>>> David

>>>

Classification: UNCLASSIFIED

U.S. v. Manning

Article 32 Investigating Officer's Chronology

DATE	EVENT
Late Jul 10	Contacted by then-Chief Trial Judge Henley to inquire whether I would be available to serve as investigating officer (did not make note of date)
4 Aug 10	Appointed to investigate original charges
5 Aug 10	Telephone briefing on Article 32 Investigations by original legal advisor, Mr. Mike Egan
15 Oct 10	Telephone consultation with Mr. Egan concerning status of delay, advised that the original defense delay request still stood
15 Feb 11	Telephone consultation with Mr. Egan concerning contacting counsel to let them know of upcoming activation and asking about length of government's case
17 Feb 11	Received defense request to compel discovery
25 Feb 11	Received government response to defense request to compel discovery
28 Feb 11	Telephone consultation with Mr. Egan concerning contacting parties regarding defense discovery request
28 Feb 11	Responded to counsel concerning defense request to compel discovery
20 Mar 11	Received directive to investigate additional charges and charge sheet with additional charges
14 Nov 11	Telephone conference with Mr. Coombs and CPT Fein regarding scheduling of hearing
16 Nov 11	Received special instructions for conducting the investigation
21 Nov 11	Reviewed memoranda directing investigation to take place and providing special instructions
22 Nov 11	Reviewed defense discovery request; received defense notice under M.R.E. 505(h)(3)
23 Nov 11	Provided Article 32 notification memorandum to PFC Manning through counsel
28 Nov 11	PFC Manning provided notification memorandum and motion for closed hearing under R.C.M 405(h)(3)
30 Nov 11	Introductory telephone consultation with second legal advisor, LTC Mark Holzer
1 Dec 11	Reviewed defense motion to compel and government response to request for production of evidence, submitted status email to parties

5 Dec 11	Reviewed evidence at MDW
6 Dec 11	Introductory telephone conference with security officer, Mr. Prather; telephone briefing on Article 32 investigations by LTC Holzer
7 Dec 11	Reviewed administrative matters, email to counsel regarding same
9 Dec 11	Reviewed defense request concerning administrative matters, email to counsel regarding same
10 Dec 11	Reviewed defense request for Article 32 witnesses, government's requested evidence list, and additional requested evidence list
11 Dec 11	Reviewed filings concerning defense request to close hearing and defense request for witnesses
12 Dec 11	Telephone conference with counsel discussing defense closure request, defense objections to evidence and witnesses, and consideration of statements under penalty of perjury; telephone consultation with LTC Holzer regarding defense closure request; continued reviewing evidence at MDW
13 Dec 11	Telephone consultation with LTC Holzer regarding consideration of statements under penalty of perjury; continued reviewing evidence at MDW; issued IO's witness list; issued determination on defense request for closure; defense request that SFC Adkins be produced at hearing
14 Dec 11	Issued determinations concerning defense objections to government evidence, IO's evidence list, considerations of statements under penalty of perjury, request for reconsideration of denial of defense closure request, defense request for media exclusion and gag order, and effect of witness invocation of Article 31/Fifth Amendment rights on their availability; provided counsel LTC Holzer's advice regarding the effect of the invocation of Article 31/Fifth Amendment rights and on statements under penalty of perjury; provided revised list of witnesses to appear in person/by telephone/by statement under penalty of perjury; participated in telephone conference with counsel concerning witness availability and closure issues, determining that SFC Adkins, SGT Padgett, and CPT Keay would be produced in person and WO1 Balonek was not reasonably available and would be available by phone
15 Dec 11	Issued determinations regarding defense-requested witnesses and evidence; telephone consultation with legal advisor regarding R.C.M. 405(f)(1) and 405(a)(1)(C); provided notice to counsel of reconsideration of determinations concerning CPT Liebman, CPT Worseley, and CPT Critchfield; received government notice of

	classified hearing; provided draft Article 32 hearing script to counsel for review; participated in rehearsal of classified closure and opening proceedings; provided revised list of witnesses to appear in person/by telephone/by statement under penalty of perjury; issued determination as to defense request for reconsideration of closure request and request for media exclusion and gag order
16 Dec 11	First day of hearing; provided rights advisement to PFC Manning and answered voir dire questions by counsel; received defense request for recusal; informed counsel of seeking legal advisor's advice concerning request for recusal; considered and denied defense request for recusal; defense filed writs with Army Court of Criminal Appeals seeking a stay of proceedings and my recusal, which were denied; issued revised determinations as to defense requested witnesses
17 Dec 11	Second day of hearing; received defense request to consider sealed stipulation of expected testimony for Ms. heard testimony of SA Graham (telephonic), SA Robertson (telephonic), SA Mander (in person), SA Bettencourt (in person), SFC Madrid (telephonic), and CPT Lim (in person); issued revised determinations as to defense requested witnesses
18 Dec 11	Third day of hearing; discussed issue of proffered stipulation of expected testimony with counsel; heard testimony of CPT Fulton (in person) SGT Maderas (telephonic), Mr. Millman (telephonic), CPT Cherepko (telephonic), SFC Adkins (in person – invoked); WO1 Belonek (telephonic – invoked), SA Shaver (in person); conducted classified closure hearing
19 Dec 11	Fourth day of hearing; heard testimony of SA Shaver (in person) SPC Baker (in person); Mr. Johnson (in person); discussed issue of Ms. Showman's testimony, determined to reconsider defense request to close hearing for a portion of Ms. Showman's testimony; received defense assertion of communications-to-clergy privilege under M.R.E. 503 for chats with Mr. Lamo
20 Dec 11	Fifth day of hearing; received government's response to defense's M.R.E. 503 assertion; denied defense M.R.E. 503 assertion; heard testimony of Ms. Showman (telephonic); conducted unclassified closure hearing to reconsider defense's closure request and took 5 minutes of Ms. Showman's testimony while closed; heard testimony of SSG Bigelow (telephonic); SA Williamson (in person); SA Shaver (in person); SA Edwards (in person); Mr. Lamo (in person); parties agreed at end of day to do closing arguments at 1000 22

	December; issued reconsideration of closure determination concerning Ms. Showman's testimony
21 Dec 11	Sixth day of hearing; heard testimony of SGT Padgett (in person); CPT Keay (telephonic); reviewed evidence; drafted written response to defense assertion of communications-to-clergy privilege under M.R.E. 503 for chats with Mr. Lamo
22 Dec 11	Seventh day of hearing; heard closing statements by counsel; closed hearing; reviewed evidence
23 Dec 11	Reviewed evidence at MDW; received defense notice of evidence
3 Jan 12	Reviewed evidence; drafted IO Report
4 Jan 12	Reviewed evidence; drafted IO Report
5 Jan 12	Reviewed evidence; drafted IO Report
6 Jan 12	Reviewed evidence; drafted IO Report
9 Jan 12	Reviewed evidence; drafted IO Report
10 Jan 12	Reviewed evidence; drafted IO Report; drafted memorandum excluding the days between 23 Dec 11 and 3 Jan 12
11 Jan 12	Completed and submitted IO Report

UNCLASSIFIED (SECRET//ORCON/NOFORN W/ENCLOSURES)



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
150TH JUDGE ADVOCATE GENERAL DETACHMENT (LSO)
MG ALBERT C. LIEBER USAR CENTER
6901 TELEGRAPH ROAD
ALEXANDRIA, VIRGINIA 22310-3320

AFRC-MJVA

11 January 2012

MEMORANDUM FOR Recipients of Article 32 Investigating Officer's Report, US v. Manning
SUBJECT: Classified Annex to Article 32 Investigating Officer's Report, US v. Manning

1. The classified annex to this Investigating Officer's Report contains the following documents:
 - a. Four classified documents marked as IO Exhibits. IO Exhibit (C) 1 and (C) 2 are classified at the SECRET//NOFORN level; IO Exhibit (C) 3 is classified at the CONFIDENTIAL//NOFORN level; and IO Exhibit (C) 4 is classified at the SECRET//ORCON//NOFORN level.
 - b. The summarized transcript of the classified portions of the Article 32 hearing held on 18 and 19 December 2011, marked as IO Exhibit (C) 5, classified at the SECRET//NOFORN level.
2. POC for this memorandum is the undersigned.

A handwritten signature in black ink, appearing to read "Paul R." followed by a checkmark or a stylized "V".

Encls
as

PAUL R. ALMANZA
LTC, JA, USAR
Investigating Officer

UNCLASSIFIED (SECRET//ORCON/NOFORN W/ENCLOSURES)

INV. OFCR. EXHIBIT 55

Exhibit 55 of the
Investigating Officer's Report
(DD Form 457) is classified
“SECRET” and stored in the
classified supplement to the
original Record of Trial

1 [Court Reporters Note: Verbatim transcript of 16 December 2011
2 proceedings produced by order of the Special Court-Martial
3 Convening Authority.]

4 [The Article 32 hearing was called to order at 0907, 16 December
5 2011.]

6 IO: Good Morning.

7 PFC Manning, I am Lieutenant Colonel Paul Almanza. By
8 order of Colonel Carl R. Coffman, Jr., I have been appointed as
9 Investigating Officer under the provisions of Article 32(b) of
10 the Uniform Code of Military Justice to conduct an investigation
11 into the charges which have been preferred against you. Before
12 proceeding, I would like to advise the participants and persons
13 observing that this is a formal investigation. In order to
14 protect the dignity and decorum of these proceedings, I would
15 ask that all present refrain from interrupting or otherwise
16 disturbing the investigation. Should any person, nevertheless,
17 engage in speech or conduct that interferes with the dignity and
18 decorum of the proceedings, they may be removed from this
19 courtroom. Additionally, the rules of the hearing provide that
20 cell phones, blackberrys, or similar devices are not authorized
21 in the hearing, if any person, with such a device, may be
22 removed from this courtroom.

23 PFC Manning, let the record show that Mr. David
24 Coombs, civilian counsel, Major Matthew Kemkes, and Captain Paul

1 Bouchard are here present with you; and I'd note that I received
2 Mr. Coombs notice of appearance and it will be entered into the
3 record.

4 IO: On 23 November 2011, I advised you of this
5 investigation and your rights to counsel in this investigation.
6 As you are in pretrial confinement, I provided that notification
7 to your counsel.

8 Counsel, when was your client provided with that
9 notification?

10 CDC: My client received notification on 28 November 2011.

11 IO: I've read the written documents provided to your
12 counsel for the sole purpose of determining which witnesses and
13 evidence would be necessary to conduct a thorough and impartial
14 investigation. Your counsel have examined those documents. I
15 will not consider those documents for any other purpose, and I
16 will make my findings, conclusions, and recommendations, based
17 only on the evidence presented during the course of this
18 investigation. After I have heard the evidence presented by
19 both the government and your defense counsel and arguments by
20 the government and the defense counsel, I will forward the
21 results of this investigation and my recommendations to the
22 Appointing Authority.

23 Do you have a copy of the charge sheet in front of
24 you?

1 ACC: Yes, sir. I do.

2 IO: The general nature of the charges in this case are one
3 charge and its specification alleging aiding the enemy, in
4 violation of Article 104, UCMJ; one charge and sixteen
5 specifications alleging causing intelligence belonging to the
6 United States Government to be published on the Internet,
7 transmitting national defense information to a person not
8 entitled to receive it, and stealing a record or thing of value
9 of the United States, in violation of Article 134, UCMJ; and one
10 charge and its five specifications alleging failure to obey a
11 lawful general regulation, in violation of Article 92, UCMJ.
12 The accuser for those charges was Lieutenant Colonel Cameron
13 Leiker.

14 I am now going to advise you of your rights in this
15 investigation. You have the right to be present throughout the
16 taking of evidence so long as your conduct is not disruptive; to
17 cross-examine any witnesses if any are called against you; to
18 present anything you might desire in your own behalf in defense,
19 extenuation or mitigation; to have a lawyer represent you at the
20 investigation; to have me examine available witnesses requested
21 by you; to make a statement in any form at the proper time, or
22 to remain silent, or to refuse to make any statement regarding
23 any offense that you are accused or suspected of, or concerning

1 matters for which you are being investigated; should you choose
2 to remain silent or to make unsworn statement, I will not hold
3 that against you in any manner.

4 IO: In addition, you are advised that any statement made
5 by you may be used as evidence against you in a trial by court-
6 martial. Before I begin the formal investigation and
7 examination of any of the witnesses in this case, I must inform
8 you that you have the right to be represented at all times
9 during this investigation by legally qualified counsel. This
10 means that you have the right to be represented by civilian
11 lawyer of your choice, but at no expense to United States; the
12 military counsel of your own selection if that counsel is
13 reasonably available; or by counsel detailed by the Trial
14 Defense Service to represent you during the investigation.
15 There is no cost to you for military counsel.

16 PFC Manning, do you have any questions about any of
17 the rights I have described for you?

18 ACC: No, sir.

19 IO: Do understand those rights?

20 ACC: Yes, sir.

21 IO: By whom do you wish to be represented in this
22 investigation?

23 ACC: By Mr. Coombs and by my military counsel, sir.

24 IO: And that's Major Kemkes and Captain Bouchard?

1 ACC: Yes, sir.

2 IO: Do you wish to be represented by anyone other than
3 those individuals?

4 ACC: Not at this time.

5 IO: Do you still wish for these three attorneys to be your
6 lawyers in this hearing?

7 ACC: Yes, sir.

8 IO: Are you satisfied with the work they have done for you
9 up to this point?

10 ACC: Yes, sir.

11 IO: PFC Manning, as the Investigating Officer in your
12 case, it is my duty to thoroughly and impartially investigate
13 the charges against you. This investigation shall include
14 recommendations concerning the disposition which should be made
15 of the case. It is my duty to impartially evaluate and weigh
16 all of the evidence. I will consider the testimony of the
17 witnesses and will also consider the evidence of which I've
18 previously notified your counsel. You and your counsel will be
19 given full opportunity to present anything you may desire in
20 your own behalf, either in defense, extenuation, or mitigation.

21 Do you understand?

22 ACC: Yes, sir.

23 IO: I can recommend that the charges against you be
24 referred for trial to a general court-martial or to a different

1 type of court-martial or that the charges be dismissed or
2 disposed of without proceeding to a trial by court-martial.

3 IO: It is not my purpose during this investigation to act
4 as a prosecutor, but only as an impartial fact finder.

5 I am currently assigned to the 150th Judge Advocate
6 General Detachment (LSO), United States Army Reserve. At the
7 time I was appointed to this investigation, I had no detailed
8 knowledge of this case, having only seen limited coverage in the
9 media concerning the allegations against you. As I previously
10 mentioned, I have reviewed the documentary evidence provided by
11 the government to both me and your defense team, but solely for
12 the purpose of determining which witnesses and what evidence
13 needed to be produced during this investigation. Other than
14 those actions, I have no substantive knowledge of the actions
15 alleged, and I do not know any of the witnesses or persons
16 involved in this hearing. I have had several written
17 communications with counsel regarding administrative and
18 scheduling matters related to this hearing. I have not acted in
19 any way that would disqualify me from conducting this
20 investigation.

21 Does either side wish to question or challenge me?

22 TC: No, sir.

23 IO: Defense?

24 CDC: Yes, sir.

1 IO: Please.

2 CDC: Just a few questions, initially.

3 CDC: Do you know how the Convening Authority was made aware

4 of your name?

5 IO: I do not know how that occurred.

6 CDC: Please describe to the best of your knowledge how you

7 became involved as the IO in this case.

8 IO: I received a call from Colonel Henley who was then the

9 Chief Trial Judge of US Army Trial Judiciary, asking if I was

10 available to serve as an Investigating Officer in this case.

11 After informing him that I was available to serve, shortly

12 thereafter I received, I believe it was in August of 2010, an

13 appointment memorandum appointing me the IO.

14 CDC: And who notified you of this appointment in August?

15 IO: That was the--the memorandum came from--it was signed

16 by Colonel Coffman, if my memory serves, and I believe it came--

17 the email transmitting it came from Captain Fein.

18 CDC: Your legal advisor is Lieutenant Colonel Mark Holzer?

19 IO: Correct.

20 CDC: Have you sought his legal advice on any issues?

21 IO: Yes, I have.

22 CDC: And briefly, could you explain which issues?

23 IO: I sought his legal advice on several issues. As the

24 parties know I have provided by notification as to the issues

1 that I sought advice for as it occurred by email and through
2 conversation.

3 IO: The first issue that I sought advice from the legal
4 advisor on was the issue as to the defense request for--
5 temporarily, I might have them out of order as there were a
6 number of issues. It was a defense request for closure of these
7 proceedings, I requested the legal advisor's advice on that
8 matter. I requested the legal advisor's advice on whether a
9 statement made under penalty of perjury could be considered as a
10 sworn statement over objection by the defense. Actually, I may
11 supplement these responses later after going through my email to
12 make sure I got them all. I also received advice from the legal
13 advisor concerning the--I received a communication from the
14 legal advisor concerning the rule, provisions for defense
15 admission of extenuating and mitigating evidence at an Article
16 32 proceeding. That is what I recall at this moment. I will go
17 through my notes and supplement that answer, if necessary.

18 CDC: Have you received advice from any other sources?

19 IO: No.

20 CDC: You indicated that you are a Military Judge. When did
21 you become a Military Judge?

22 IO: I became a Military Judge in June of 2009.

23 CDC: When did you attend the Military Judges course?

1 IO: I attended the Military Judges course in--correction,
2 June 2010. So I attended the Military Judges course in 2010.

3 CDC: And when was that?

4 IO: That was April-May.

5 CDC: During your time in the JAG, have you ever come to the
6 JAG school for instruction, other than the Judge's course?

7 IO: Yes, I have.

8 CDC: I was an evidence professor there from 2007 to 2009.

9 Did I ever teach you in a class?

10 IO: I do not recall. I do not, because I do not think
11 that I attended any courses at the JAG school during that time
12 frame. I attended the Basic Course in '96. I attended the
13 Reserve Advanced course in 2004. Then I attended the Judge's
14 course in 2010.

15 CDC: How many courts-martial had been presided over as a
16 Military Judge?

17 IO: Six.

18 CDC: Briefly, can you tell me what types of courts-martial?

19 IO: They were BCD special courts-martial. They were all
20 guilty pleas.

21 CDC: They were all what?

22 IO: Guilty pleas. One was a mixed plea, as well.

23 CDC: The mixed plea, did that involve a panel?

24 IO: No.

1 CDC: Who is your civilian employer?

2 IO: The Department of Justice. I work for the Child

3 Exploitation and Obscenity Section in the Criminal Division.

4 CDC: And what is your position there?

5 IO: I am a Deputy Chief.

6 CDC: How long have you been working for the Department of

7 Justice?

8 IO: Since November of 2002.

9 CDC: How many cases have you prosecuted as a member of the

10 Department of Justice?

11 IO: I was a trial attorney from 2002 to late 2004 and

12 probably prosecuted in the neighborhood of 20 cases.

13 CDC: Are you aware that the Department of Justice has an

14 ongoing criminal investigation involving the conduct of my

15 client?

16 IO: Yes, partially through--I'm not sure if I was aware

17 before reading the files in this case, but I am aware now that

18 the Department of Justice has an ongoing investigation based on

19 the information that I've read in this case.

20 CDC: Have you been exposed to any information from this

21 ongoing investigation?

22 IO: No, I have not.

23 CDC: Have you spoken with anyone within the Department of

24 Justice about the ongoing investigation?

1 IO: No, I have not.
2 CDC: Has anyone within the Department of Justice, after
3 your appointment as the IO here, discussed your service as the
4 Investigating Officer?

5 IO: No, with the exception of, of course, informing my
6 supervisor that I needed to take military leave to conduct this
7 investigation.

8 CDC: Did you inform your supervisor as to the nature of
9 what you would be doing?

10 IO: My supervisor is a former Judge Advocate, so he knew
11 what an Article 32 investigation was and----

12 CDC: No. My question was did you inform him of the nature
13 as far as for this hearing that you would be the Investigating
14 Officer in the case of the United States v. PFC Bradley Manning.

15 IO: Yes I did; and it is also in my orders that I had to
16 submit to get military leave, it states--my activation orders
17 for this proceeding states, "32 Officer, U.S. v Manning."

18 CDC: Speaking of the orders, were you mobilized or were you
19 just put on orders for this?

20 IO: I was put on orders for this.

21 CDC: When were you put on orders?

22 IO: Wait one.

23 [The Investigating Officer reviewed his materials.]

24 IO: My orders are dated 2 December 2011.

1 CDC: So up until 2 December 2011, you were working as a
2 prosecutor within the Department of Justice?

3 IO: Correct.

4 CDC: After 2 December 2011, being placed on orders----

5 IO: Correction, or just for clarification; my orders are
6 dated 2 December 2011, I reported for and I was trying to do
7 this hearing on 12 December 2011.

8 CDC: Okay, so between 2 December 2011 and 12 December 2011,
9 you were still working at your primary civilian position?

10 IO: Correct.

11 CDC: And since being placed on orders and actually here 12
12 December 2011, have you responded to any emails or done any work
13 for the Department of Justice?

14 IO: No. I have been fully engaged in this proceeding.

15 CDC: So you've responded to no emails from your civilian
16 employment?

17 IO: I believe that is correct. I do not think that I have
18 responded to a single one.

19 CDC: Are you performing any work since 12 December 2011,
20 for the Department of Justice?

21 IO: No.

22 CDC: You indicated that you had some prior knowledge. What
23 prior knowledge do you have about this case?

1 IO: I was appointed as the Investigating Officer in August
2 2010 and I believe I was aware since the case received media
3 coverage, generally, as to the nature of the allegations against
4 PFC Manning. I can't give you a specificity which articles I
5 read, or which TV coverage I may have seen, but I know I saw
6 some articles and I know I saw some TV coverage. Since being
7 appointed the Investigating Officer in August 2010, I've made
8 every effort to not--like when I'm reading The Post in the
9 morning on the way to work, or if I saw a headline that
10 pertained to this case, I did not read the article.

11 CDC: So prior to being appointed, what initial impressions
12 did you have about this case based on what you heard or saw in
13 the media?

14 IO: Prior to being appointed? I know I recall thinking
15 that if these allegations are true, it was a serious matter.

16 CDC: Did you ever have any discussions with any friends or
17 associates about WikiLeaks, PFC Manning, or the alleged leaks in
18 this case prior to being appointed as the Investigating Officer?

19 IO: Frankly, I don't recall.

20 CDC: Did you form any opinions based upon what you read or
21 saw prior to being appointed as the Investigating Officer other
22 than this was a serious matter?

23 IO: No, because--generally no; because, although something
24 is reported in the paper that doesn't necessarily mean

1 conclusively it's accurate or it's the full story? So, I did
2 know if true this was a serious matter but I don't believe I
3 formed any opinions as to whether PFC Manning was guilty or
4 innocent of these accusations.

5 CDC: Lieutenant Colonel Almanza, at this time the defense
6 does not have any further questions of you. However, under
7 R.C.M. 902(a), the defense would move that you recuse yourself.

8 A Military Judge shall disqualify himself in any
9 proceeding which the Judge's impartiality might reasonably be
10 questioned. Case law applies that requirement and that
11 obligation also to an Investigating Officer. The important part
12 here is the test under R.C.M. 902(a), is not actual bias but
13 just the mere existence of a reasonable question about bias.
14 The defense believes there are four reasons which independently
15 would support you recusing yourself, but collectively mandate
16 that you do so.

17 The first, your position as a prosecutor within the
18 Department of Justice. You are a career prosecutor, you have
19 been a prosecutor with the Department of Justice since 2002. By
20 your own admission you have prosecuted over twenty cases. This
21 fact coupled along with the fact that the Department of Justice
22 has an ongoing criminal investigation involving this case; which
23 if the Department of Justice has its way, based upon the
24 witnesses they have dragged in for grand jury testimony, that

1 they would get a plea in this case, involving my client, and
2 have my client be one of the many witnesses that they would use
3 in order to go after Mr. Julian Assange and WikiLeaks.

4 CDC: Additionally, the Department of Justice has not ruled
5 out the fact that they would take over this prosecution from the
6 military and, in fact, prosecute PFC Bradley Manning on their
7 own.

8 The fact that you denied a defense request for a copy
9 of the Department of Justice investigation, saying that it was
10 either not relevant or too difficult to obtain also would cut
11 against the fact that you should be acting here today as the
12 Investigating Officer. A reasonable person based solely upon
13 this fact, listening to these facts in this case would question
14 whether or not you are, in fact, impartial.

15 Second, your ruling on defense witnesses. The
16 government submitted a witness list of 20 witnesses. Every one
17 of the government's requested witnesses was granted, either in
18 person or by telephone. As typical of the government, the
19 government's witness list just listed names, no real basis for
20 it, just names. No basis of relevance whatsoever, and yet you
21 granted all of their witnesses. The defense, on the other hand,
22 submitted afterwards a witness request of 48 witnesses. A 19
23 page witness request listing the relevance of each of the
24 witnesses. 10 of the witnesses were in common with the

1 government; of course, those were granted. Of the 38 witnesses
2 that were not in common, only 2 were granted, 2 out of 38. Then
3 this morning, magically, perhaps 2 more will be granted.

4 CDC: To the detriment of the defense and its ability to
5 prepare, but 2 out of 38 in a case in which the government has
6 charged my client with aiding the enemy. An offense that
7 carries a maximum, right now, of death, unless the government
8 decides it does not want to go forward with a capital offense.
9 2 out of 38. An individual looking at this from the outside, a
10 reasonable person would say, clearly in this case the
11 Investigating Officer is biased.

12 Third, your ruling on closure. The government has
13 given notice to the defense of uncharged misconduct and other
14 information which the defense believes would not be admissible
15 at trial, but if made public would seriously impact PFC
16 Manning's ability to obtain a fair trial. The defense filed
17 well in advance a motion requesting that you close the hearing
18 for a limited portion of that testimony. It in the defense's
19 mind was a no-brainer motion. No prejudice could happen to the
20 defense if it's closed, no prejudice would have happened to the
21 government if it is closed. The only prejudice that would
22 happen in the case is if you allowed it to remain open, and
23 inexplicably you ruled just that. Even though the defense
24 requested for you to reconsider that three times. Three times

1 you came back with the same ruling. No. You know what,
2 defense, you can do voir dire at trial in order to try to find
3 it prejudicial. Or, you can request the Military Judge give a
4 limiting instruction.

5 CDC: Anybody who has practiced more than a day knows both
6 of those things are very, very unlikely to eliminate and to
7 bring out prejudice if an individual hears something in the
8 press and wants to hold onto. The surest way to prevent
9 prejudice is to prevent it in the first place; which would be to
10 close the proceeding. Which, again, with the exception of being
11 a career prosecutor, an individual would say, "Yes, that is a
12 common sense outcome here." That is the resolution that an
13 unbiased Investigating Officer would conclude.

14 Third [sic], your ruling with regards to the sworn
15 statements. Many people have wondered why we are here, a year
16 and a half later. Why we here a year and a half later, why has
17 it taken so long? Because the government, has asked for a
18 delay, after delay, after delay, and the Convening Authority has
19 granted it over the defense objection. Time again, time again,
20 time and again. Why have we had this delay, because the
21 government needed to get original classification authorities'
22 determination on whether or not this information was classified,
23 and would it cause any damage? That is what we waited a year
24 and a half to hear from the original classification authorities.

1 So the government has finally given us this list,
2 we've asked, "Let's get these witnesses up here. Let's put
3 these witnesses on the stand, and let's require these witnesses
4 to say, 'why is the stuff classified.'"

5 CDC: "'Why is this stuff going to cause harm.'" And yet,
6 inexplicably, the government does not want to produce these
7 witnesses. And when the defense has asked you to do that, you
8 have denied that. Instead, you said these witnesses could
9 testify telephonically, maybe. The defense has said, "That we
10 can't do that, we need them here in person." And ultimately,
11 you ruled that, "No, I'm going to consider unsworn statements
12 from these witnesses," and when you made that ruling, the
13 defense said, "Wait a second, RCM 405 clearly states you cannot
14 consider unsworn statements over the objection of the defense."
15 The government responded to that, and the defense maintained its
16 position.

17 You, independently, went out and found two cases to
18 support the government's position. When you served that on the
19 defense, the defense responded by saying, "Look, those cases can
20 easily be distinguished based upon the facts; they do not
21 support that position." After doing that you, independently
22 again, went out and found three additional cases supporting the
23 government's position, never putting the burden on the
24 government to argue its position. The defense was placed in

1 position, not only having to argue against the government, but
2 now arguing against another prosecutor, the Investigating
3 Officer.

4 CDC: Ultimately, you concluded against the clear language
5 of RCM 405. Against the clear requirements for unsworn
6 statements over the defense's objection, that these statements
7 from the OCA had the indicia of reliability. A test that is
8 nowhere in the manual, you made up a test all on your own, and
9 ultimately concluded that, "Yes, I am going to consider this.
10 I'm going to consider these OCA statements thereby eliminating
11 the defense's ability to question even why the stuff is
12 classified." All of this has been leaked, a year and half
13 later, this is what we are doing. Where's the damage? Where is
14 the harm? That's what defense wanted to get out today and in
15 this hearing. And yet you, again, ruled, "No, I'm not going to
16 hear that."

17 Independently, the fact that you are a career
18 prosecutor, or the fact that you only gave 2 out of 38 witnesses
19 requested by the defense, or the fact that you determined that,
20 "No, I'm not going to close the hearing, I'm going to allow
21 prejudicial information to impact PFC Manning's right to a fair
22 trial." Or the fact that you ultimately determined that you're
23 going to consider unsworn statements over the defense objection.
24 Any of those would independently support you recusing yourself,

1 collectively they mandate it. The defense is filing a motion
2 here for you to recuse yourself, along with legal argument. One
3 case in particular that you should pay close attention to is,
4 United States v. George, which almost mirrors this eerily, in
5 which ACCA said, "A reserve judge, a civilian prosecutor, should
6 recuse themselves." We request that you consider this motion,
7 and, in fact, after doing so you recuse yourself in this case.

8 IO: Government, do you have anything that you wish to be
9 heard?

10 TC: Yes, sir. The government wishes to be heard but we
11 would ask for a short recess to review this motion that just
12 landed on our desk.

13 IO: Absolutely, I intend to take a recess to consider the
14 motion but I just want to know if you wanted to be heard now
15 before we take a recess?

16 TC: Sir, we could wait for the recess or if you would like
17 to we can rebut these possible issues.

18 IO: I anticipate that this will not be a short recess, so
19 I'm going to put the hearing on recess and we will let the
20 parties know when we will reconvene.

21 [The Article 32 hearing recessed at 0934, 16 December 2011.]

22 [The Article 32 hearing reconvened at 1135, 16 December 2011.]

23 IO: This hearing is now in session. All parties present
24 when the hearing recessed are again present.

1 Government, have you reviewed the defense's motion?

2 TC: Yes, sir, we have.

3 IO: Do you wish to be heard?

4 TC: We do, sir.

5 CDC: Sir, prior to that, I just wanted to make sure at this
6 point that you have not made up your mind?

7 IO: I have not made up my mind and after he speaks, I
8 intend to hear from you, if you have any points in rebuttal.
9 Then I intend to take a recess to make a determination. At this
10 point I have not made up my mind.

11 CDC: Very well.

12 IO: Oh, I would also like to put on notice-- the parties
13 notice, that I intend-- when I recess to deliberate, I intend to
14 ask my legal advisor for advice as to this issue.

15 CDC: The defense would also request that you contact the
16 Chief Trial Judge at US Army Judiciary on the issue.

17 IO: Okay, will do.

18 Captain Fein.

19 TC: Yes, sir.

20 Sir, the purpose of this portion of the investigation
21 we're at, is to determine whether you can make an impartial
22 recommendation as to the charges against Private First Class
23 Manning. The United States would like to ask you a few

1 questions and explore any potential bias in this voir dire
2 process.

3 First, regarding your position at the Department of
4 Justice is in civilian capacity, not your US Army Reserve
5 capacity.

6 Are you currently a trial counsel at, or trial
7 attorney excuse me, at the Department of Justice?

8 IO: No, I am not.

9 TC: What is your current position?

10 IO: I'm deputy chief and my work concerns policy and
11 legislation. So I do not supervise any prosecutors on a daily
12 basis. Occasionally, I have cause to assist--advise the trial
13 attorneys on an occasional basis, but not on a day-to-day basis.

14 TC: On a limited basis or even on a daily basis, at the
15 Department of Justice, do you or have you reviewed any material
16 dealing with Private First Class Bradley Manning?

17 IO: No.

18 TC: Sir, in that same capacity, at the Department of
19 Justice, have you reviewed any material dealing with WikiLeaks?

20 IO: No.

21 TC: And while at the Department of Justice, have you had
22 any conversations with any individual at the Department of
23 Justice or any of its subordinate organizations such as the

1 Federal Bureau of Investigation, regarding Private First Class
2 Manning?

3 IO: No.

4 TC: In the same regard at the Department of Justice, have
5 you had any conversation with any individuals dealing with
6 WikiLeaks?

7 IO: No, I have not.

8 TC: Sir, do you believe that you could thoroughly and
9 impartially investigate the charges against Private First Class
10 Manning?

11 IO: I do.

12 TC: Sir, in reference to the witness list determinations
13 that you've made over the past two weeks, you chose to hear in-
14 hearing and telephonic testimony of 15 witnesses the defense
15 requested, correct?

16 IO: Correct.

17 TC: Did you follow the procedures set forth in Rule for
18 Court-Martial 405(g)(2), on determining the witness
19 availability?

20 ACC: I did.

21 TC: Did you determine if the significance of their
22 testimony either in-hearing testimony or if they are not
23 reasonably available telephonic testimony, outweighs the
24 difficulty, expense, delay, and effect on military and

1 government operations as set forth in Rules for Court-Martial
2 405?

3 IO: I did, in my determination document, which counsel
4 have seen, I make determinations as to those specific issues
5 with respect to what the defense requested witnesses.

6 TC: Okay, sir. So did you make written findings----

7 IO: Yes.

8 TC: ----of fact for the record on the relevance and or
9 cumulative nature of the evidence or testimony that is required
10 under the rule?

11 IO: Yes.

12 TC: Is that decision, sir, subject to a Military Judge or
13 Appellate review?

14 IO: Yes.

15 TC: And did you consult with your legal advisor in making
16 that determination?

17 IO: I consulted with my legal advisor as to the standard,
18 like during the initial briefing, one of the things we discussed
19 were the rules for determining availability of witnesses and
20 evidence. I did not consult with my legal advisor on any
21 specific matters. As I noted to counsel this morning, last
22 night the legal advisor contacted me and just asked if I--there
23 are two R.C.M 405 provisions (f)(11) and the other one escapes
24 me at this time. The two R.C.M. 405 provisions concerning E and

1 F, he wanted to make sure that adequately considered those, and
2 on the basis of that conversation, I reconsidered my
3 determinations as to three witnesses this morning and so
4 informed counsel.

5 TC: So sir, you did consult your legal advisor on ensuring
6 your interpretation of the rule that you were following a proper
7 interpretation.

8 IO: Correct.

9 TC: Sir, in reference to the closure determination. When
10 reviewing the defense's request for closure of this hearing to
11 the public and media, did you follow the rules set forth in
12 Rules for Court-Martial 405 and 806?

13 IO: Yes, I did.

14 TC: Did you follow the test outlined in Rule 806?

15 IO: Yes, I did, and the main issue that was the basis for
16 my determination was the factors as to whether other measures
17 beside closure were considered and whether they were inadequate
18 or not.

19 TC: Sir, I assume, the factor that you are talking about
20 is the test that is outlined in the Rule--

21 IO: Correct, and [R.C.M.] 806(b)(2).

22 TC: Did you make a written finding?

23 IO: I did.

24 TC: A fact that is reviewable, sir, on that?

1 IO: I did.

2 TC: And then, in addition to that, in that written

3 finding, did you actually outline this Rule- the court-martial

4 used in this hearing- the Article 32 shall be open to the

5 public. Unless one, there is a substantial probability that

6 overriding interest will be prejudiced if the proceedings remain

7 open. Two, closure is no broader than necessary to protect that

8 overriding interest. Three, reasonable alternatives to closure

9 were considered and found in adequate. Then four, that you as

10 the Investigating Officer make a case specific finding on the

11 record, justifying that closure.

12 IO: I did, and in that written discrimination I found the

13 first two elements met I found that through voir dire and

14 appropriate instructions for the Military Judge were a measure

15 that will be adequate to protect PFC Manning's right to a fair

16 trial should this case be referred to trial.

17 TC: Sir, in that written finding, is it accurate to say

18 that you considered the annotated discussion found in Rule for

19 Court-Martial 806.

20 IO: Yes, I did.

21 TC: And sir, did you make written findings based off that

22 discussion and the Rule in 806?

23 IO: I did.

1 TC: And sir, did you consider, specifically, the portion
2 of the rule that says, "By opening trials to public scrutiny,
3 reduces the chance of arbitrary and capricious decisions and
4 enhances the public confidence in this court-martial or Article
5 32 process."

6 IO: I did.

7 TC: Sir, did you consult with your legal advisor when
8 making this determination?

9 IO: I did.

10 TC: And finally sir, did you consider reasonable
11 alternatives to closure as required in the test, in the Rule
12 under R.C.M 806?

13 IO: I did, specifically; I considered and made findings as
14 to voir dire and appropriate rules and instructions of the
15 Military Judge.

16 TC: And those are written findings in the record that will
17 be reviewed by the Military Judge or appellate court later?

18 IO: Should this case be referred for trial? Yes.

19 TC: Yes, sir.

20 Sir, now I am referencing sworn statements. In making
21 your determination with respect to alternatives to testimony
22 during this investigation, did you consider the rules outlined
23 in Rule for Court-Martial 405(g)?

24 IO: I did.

1 TC: And did you consult with your legal advisor on this
2 issue?

3 IO: I did.

4 TC: Did your legal advisor provide you with legal research
5 concerning this issue?

6 IO: Yes, he did, and I provided his advice in the
7 documents he provided me to counsel.

8 TC: And sir, with this legal advice, did you determine
9 that you would consider the original classification authority
10 statements made under the penalty of perjury pursuant to 28
11 U.S.C. §1746, in lieu of their testimony, because they are not
12 reasonably available?

13 IO: Yes, that is the determination that I made.

14 TC: And you did that, sir, pursuant to the rules set forth
15 in Rule for Court-Martial 405?

16 IO: Correct.

17 TC: And finally, sir, did you make those written findings
18 of fact concerning that decision?

19 IO: Yes, I believe so. Yes.

20 TC: Thank you, sir.

21 IO: There are number of emails between the counsel, so I
22 believe that was contained in an email.

23 TC: So it is documented for the record?

24 IO: Correct.

1 TC: Thank you, sir. I guess, the final part to just
2 respond to the defense. To orally respond, given that it is his
3 request of you. First, this hearing, as you know is an Article
4 32 investigation, it is not the court-martial; therefore you are
5 detailed here by the Convening Authority and are not, as you
6 know, sitting as a Military Judge at trial. The defense relies
7 on United States v George. George is the basis of its argument.
8 United States Army Court of Military Review decision was
9 centered on reviewing the actions of the Military Judge, acting
10 in the capacity of a Military Judge, at a military court-
11 martial. This case did not concern a preliminary investigation-
12 -

13 IO: But don't the rules as to recusal apply to
14 Investigating Officers, counsel?

15 TC: Sir, they do. The rules for recusal, but actually the
16 holding in the case is not about recusing for impartiality. It
17 is only dicta under Judge Johnston's opinion in the concurrence.
18 And that opinion states, Judge Johnston's, "That the Military
19 Judge abandon his impartiality and became an advocate for the
20 prosecution, as shown by his openly adversarial relationship
21 with the trial defense counsel." Again, dicta by Judge
22 Johnston, sir, this dicta stands for the possibility of a
23 Military Judge, at a court-martial being openly hostile towards
24 the defense and openly supportive of the government. The

1 defense's position using this case would be that any unfavorable
2 rulings by Investigating Officers, or at least the ones
3 proposed, that were made with advice of a legal advisor would be
4 the basis recusing yourself, and the United States disagrees.

5 Additionally, there is no prohibition with you
6 receiving legal advice, including legal references or citations
7 from your legal advisor and you relying on their legal research,
8 and in the end, sir, the United States does not believe you have
9 exhibited any bias in any form that you can conduct a fair and
10 impartial investigation.

11 IO: Yes, but isn't the test not whether the United States
12 believes something or whether--they haven't alleged actual bias,
13 they have alleged the appearance of bias, but isn't the test of
14 whether a reasonable person knowing all the circumstances, would
15 reasonably believe that the impartiality of the Investigating
16 Officer could reasonably be questioned?

17 TC: Sir, it absolutely is the test, and the United States
18 believes, sir, you based off of your written findings, that are
19 reviewable by Military Judge. This open process right now, that
20 the public can scrutinize, that a reasonable person would
21 believe that this voir dire process would sift out any potential
22 bias and by your background at the Department of Justice that
23 precluded you, almost, from having access to anything dealing

1 with Private Manning or WikiLeaks, that alone, a reasonable
2 person would believe that you can remain unbiased.

3 IO: Thank you, Government.

4 TC: Thank you, sir.

5 IO: Mr. Coombs.

6 CDC: Just to pick up where you left----

7 IO: Just a second, please.

8 CDC: Just to pick up from where you left off with trial
9 counsel.

10 CDC: Again, the defense's position isn't that in the
11 adversarial process rulings that go against the defense would
12 necessarily require the IO to step down. Obviously when you
13 have a hearing and it is adversarial you are going to get
14 rulings for you and rulings against you; and that is natural.
15 But as you correctly pointed out, the proper test here is not
16 whether or not you believe you can be impartial. Certainly not
17 whether or not the government; and certainly they do believe
18 that you can be impartial. The test is whether or not a
19 reasonable person would believe that you can be impartial based
20 upon all of the facts and all of the circumstances that are
21 known. Here it is without a doubt that you are a member of the
22 Department of Justice. The simple fact that you are a part of
23 the Department of Justice that has an ongoing criminal
24 investigation involving my client, that simple fact alone, could

1 you as the IO see a reasonable person questioning your
2 impartiality?

3 IO: Mr. Coombs, in the Merit, case, The Court found that
4 the Investigating Officer in Merit was a prosecutor in another
5 Air Force Base from where the investigation occurred. The Court
6 essentially disagreed with the notion of the fact that the IO
7 was a prosecutor at the time in the same entity of the Air
8 Force, that was prosecuting the accused caused lack or of an
9 appearance of loss of impartiality.

10 IO: I'd note that the Department of Justice is large. I
11 am in the Child Exploitation and Obscenity section. Our purview
12 does not include anything related to National Security or
13 classified material or anything that would be investigated by
14 these allegations against the accused. So, what I ask you to do
15 is address Merit to the point that if Merit says being a
16 prosecutor is another--does it create the loss of appearance of
17 impartiality. Isn't that relevant here since I am not in any
18 part of the Department of Justice that investigates the types of
19 matters that PFC Manning is accused of?

20 CDC: You'd have to take it in its proper context. Merit,
21 obviously, deals with an instance in which you have a civilian
22 prosecutor in a totally separate case. In this instance you are
23 a member of the Department of Justice. The Department of
24 Justice has an ongoing criminal investigation. Whether or not

1 the Department of Justice is large or not is not relevant. What
2 is relevant is what with these people here view when they look
3 at you. Do they see an impartial person or do they see a member
4 of the Department of Justice that as of 12 December was working
5 out of his office. And----

6 IO: But in Merit----

7 CDC: ----the defense received emails from you from your
8 Department of Justice----

9 IO: ----I understand----

10 CDC: ----email address, not from your U.S. Army AKO
11 address. Clearly indicating you still had the hat on your head
12 as a member of the Department of Justice. That simple fact
13 alone without anything else would cause a reasonable person to
14 say, "You know what, I question his impartiality."

15 In fact, the media has already done so. If Your Honor
16 would--or you would like to take a look, the media has already
17 published multiple accounts on questioning whether or not you,
18 as a member of the Department of Justice, should even have been
19 detailed to this case. And clearly the government--the IO had
20 many--the Convening Authority had many people he could have
21 chosen from. Hundreds of people he could have chosen from, and
22 yet he chose you; a Department of Justice person.

23 IO: I'm going to go back----

24 CDC: Not----

1 IO: I'm going to go back to Merit, because in Merit, the
2 United States Air Force was prosecuting the accused. The same
3 entity with the--the Investigating Officer in Merit was a
4 prosecutor for the United States Air Force which was also
5 prosecuting Merit on another Air Force base. That fact, it was
6 not found to create a reasonable--a loss as to the reasonable
7 appearance of impartiality. That which seemed to be on point.

8 CDC: It's not on point. And the reason why it's not on
9 point is because Merit didn't involve a civilian prosecutor.
10 The prosecutor actually prosecuting or investigating a case
11 involving the accused. I guarantee you if that prosecutor in
12 Merit was from an office, a civilian office, in which they had
13 an ongoing case against Merit, you would have had a totally
14 different outcome.

15 IO: All right.

16 CDC: That is the problem here. That is something that
17 cannot be erased and a reasonable person would say, "You know
18 what, I have a problem with that." Especially with the fact
19 that you--then coupled with that have ruled consistently against
20 the defense.

21 IO: All right.

22 CDC: And most importantly, it is the investigation that the
23 defense has asked for. Multiple investigations that would
24 undercut much of what the OCAs have opined in their unsworn not

1 sworn, unsworn declarations. Yet, the defense gets none of
2 them. Now as of 12 December, as you correctly noted, you were
3 sending emails, even after that fact, from your Department of
4 Justice email address, correct?

5 IO: Right. Related to this matter from my blackberry.
6 Correct.

7 CDC: And Department of Justice email is your email address,
8 obviously, as a member of the Department of Justice?

9 IO: Correct.

10 CDC: So even at that point you were not responding from
11 your U.S. Army.mil address or from any other military email
12 address?

13 IO: Certainly the emails that I sent because of the
14 internet access here, I had sent from DOJ blackberry, which I
15 have with me.

16 CDC: And all of the voir dire, including the argument of
17 the government, goes towards whether or not they believe you
18 might actually have a bias, but do you sitting there see how a
19 reasonable person could question whether or not you are biased?

20 IO: Well, that's what I am going to be deliberating on
21 when I go deliberate.

22 CDC: Well, you responded to the government by saying, "I
23 don't believe I am biased."

24 IO: No. I don't believe I am biased.

1 CDC: And now I am asking as the defense do you see a
2 reasonable person, how they could question whether or not you
3 are biased?

4 IO: I have not yet determined that issue. That is the
5 issue--you asked me had I made up my mind about this issue. The
6 issue is whether I believe a reasonable person knowing all of
7 the circumstances would reasonably believe that I lack
8 impartiality in this matter.

9 CDC: Well, could you see that----

10 IO: That is the determination I have not yet made.

11 CDC: ----from a hypothetical, could you see a person
12 saying, "You know what, the government got all of their witness
13 and the defense got 2 of its 38 witnesses." Could you see that
14 as a fact that would cause a reasonable person to question?

15 IO: Yes, that is one of the things that I will consider
16 when I deliberate.

17 CDC: Could you see where the government asked you to
18 consider and I've seen the accounts--the defense is not asking
19 for this to be closed. We want an open hearing. We want the
20 public to see everything. What we're asking is for very limited
21 pieces of information that can do nothing but taint my client's
22 ability to get a fair trial, that that be closed so that the
23 press doesn't publicize that. Could you see where a reasonable
24 person would say your ruling allowing that to come out and

1 saying well, the defense can clean up the mess afterwards might
2 cause somebody to say they're not fair?

3 IO: That is also a matter I will consider when I
4 deliberate.

5 CDC: And lastly, given the fact that this case rises and
6 falls on whether or not information is properly classified;
7 whether or not it could cause harm. Could you see a reasonable
8 person going, the IO's determination that these people are too
9 important to come here. The expense and the time and effort to
10 bring Lieutenant Generals, Rear Admirals, and Vice Admirals here
11 to back up their unsworn declarations might cause a reasonable
12 person to say you know what, that this whole case. And now the
13 defense can't cross-examine any of the people who are supporting
14 the 22 specifications against this man [pointing to the
15 accused]. Would that cause somebody to say----

16 IO: The test----

17 CDC: ----you know what----

18 IO: The test does not----

19 CDC: ----I wonder if he could be biased or not?

20 IO: The test is not whether somebody is too important to
21 be brought to testify but rather whether the significance of
22 their expected testimony outweighs, it's in the rule----

23 CDC: Exactly. These people are so important, there is no
24 expense, time and delay that would authorize them not being here

1 today. So could you see how somebody then might say, "You know
2 what, I don't think this guy can be impartial."

3 Lastly, the government has said a [Article] 32 is not
4 a court-martial. A [Article] 32 is part of the military justice
5 system. This courtroom is beautiful. Everything they have done
6 here is to show the best face of the military justice system.
7 This is the best we can do [turning to speak to the spectator
8 gallery]----

9 IO: Mr. Coombs, who are you addressing?

10 CDC: I'm addressing the public because this is a public
11 hearing. What I am saying is if this is the best that we can
12 do, military justice? This is an Article 32 hearing. It should
13 be a thorough and impartial hearing. We should go out of our
14 way, especially given all the comments by the Secretary of
15 State, by The President of the United States, by multiple
16 members of the Department of Defense as to whether or not there
17 is blood on the hands of the people who leaked this information;
18 whether or not my client should be executed. All the public
19 comments, all of the statements that were done initially should
20 beg for the fact that we have a thorough and impartial hearing
21 to actually get to the facts. Not to further hide it. Not to
22 say, you know what he will have his day in court but the Article
23 32 is not going to be it. That is unacceptable.

24 IO: Thank you both.

1 I will now take a recess. Before I take the recess, I
2 do want to note one other matter. I received a Petition for
3 Extraordinary Relief in the Nature of Writs of Mandamus and
4 Prohibition for action by a certain party and their counsel to
5 this proceeding. After--I'm just putting the parties on notice
6 of that, should he wish to be heard concerning that we could do
7 that in a conference right now, okay?

8 CDC: On that same note, dependent upon your ruling, I've
9 contacted Lieutenant Colonel Peter Kageleiry, the all writs
10 coordinator; along with Colonel Patricia Ham, the Chief of
11 Defense Appellate Division. They have agreed to file a writ,
12 assuming your ruling is not in favor of the defense to stay the
13 proceedings in order to seek an order for the Convening
14 Authority to remove you as the Investigating Officer. So,
15 again, if your ruling is to recuse yourself, which the defense
16 believes is appropriate, that won't be necessary. If not, the
17 defense will be asking for a stay while ACCA considers the stay
18 request.

19 IO: Okay. Thank you.

20 We are in recess.

21 [The Article 32 hearing recessed at 1158, 16 December 2011.]
22 [The Article 32 hearing was called to order at 1341, 16 December
23 2011.]

1 IO: This hearing is now in session. All parties present
2 when the hearing recessed are again present.

3 I have been informed that there are parties in the
4 gallery that were not here earlier and so I will, again, read a
5 brief admonition.

6 I would like to advise the participants and persons
7 observing that this is a formal investigation. In order to
8 protect the dignity and decorum of these proceedings, I would
9 ask that all present refrain from interrupting or otherwise
10 disturbing the investigation. Should any person, nevertheless,
11 engage in speech or conduct that interferes with the dignity and
12 decorum of the proceedings, they may be removed from this
13 courtroom. Additionally, the rules of the hearing provide that
14 cell phones, blackberries, and similar devices are not
15 authorized in the hearing; and if any person with such a device
16 may be removed from this courtroom.

17 With respect to the defense's request that I recuse
18 myself under R.C.M. 902(a), before making my determination I
19 consulted with my legal advisor who advised me as to the
20 standard of R.C.M. 902(a), a recusal is required if my
21 impartiality may reasonably be questioned. He also advised that
22 the test is any conduct that would lead a reasonable man knowing
23 all of the circumstances to the conclusion that my impartiality
24 might reasonably be questioned.

1 IO: Does either counsel have responses to the legal advice
2 that I received?

3 TC: No, sir.

4 CDC: No, sir. But again my understanding is that you
5 haven't sought out or seeked advice from the Chief of the Trial
6 Judiciary.

7 IO: Right. As I noted in the brief session before the
8 hearing continued; in response to the defense's request that I
9 also seek the advice from the Chief Trial Judge, I have
10 attempted to contact him and that had not been successful during
11 the recess.

12 CDC: Given the fact that your appointment or at least the
13 direction was from the former Chief, Trial Judiciary, your name
14 was offered up?

15 IO: No. What I had said was that--the way that I had
16 learned about my appointment was that the Chief Trial Judge had
17 asked me if I--the former Chief Trial Judge had asked me if I
18 was available to serve as the IO in this case. After that
19 conversation I received the appointment orders.

20 CDC: Then again the defense would request that if the
21 ruling isn't one that you are recusing yourself shortly that you
22 hold off issuing a ruling until you have spoken with the Chief
23 Trial Judge.

1 IO: I believe I can make the determination on the facts
2 known to me and that request is denied.

3 I have considered the matters raised by the defense
4 and I am mindful of the admonition in Judge Johnson's
5 concurrence in the George case. With that said, I do not
6 believe a reasonable person knowing all of the circumstances
7 would be led to the conclusion that my impartiality might be
8 reasonably questioned. I, thus, deny the defense's request that
9 I recuse myself as Investigating Officer in the hearing.

10 Now I will prepare a written determination in the
11 response to the defense's request and will attach that to the
12 report of investigation.

13 CDC: The defense would request that you also now stay the
14 proceedings and order a verbatim transcript of today in order
15 for that to be given as part of the defense writ to ACCA so that
16 ACCA can consider everything that was said here today in order
17 to determine whether or not your determinations along with your
18 legal findings and conclusions are, in fact, appropriate.

19 IO: Government?

20 TC: Sir, the United States argues that we do not need stay
21 these proceedings. We can continue with the proceedings,
22 pending a decision by ACCA on whether to accept the writ and
23 make a decision on that.

1 Secondly, as far as the verbatim transcript;
2 administratively you could request the Convening Authority to
3 order a transcript to be created, but currently under the
4 current order it is a summarized transcript only.

5 IO: On that note, I understand that the defense would like
6 a brief recess to contact counsel concerning filing the writ?

7 CDC: If your determination is that you will not stay the
8 proceedings, then yes. I would want to have a brief recess in
9 order for them to file the writ in order to try to obtain an
10 order from ACCA today.

11 IO: Right. My determination is that it is not necessary
12 to stay the proceedings. Therefore, I will grant a recess so
13 that defense can file the writ.

14 CDC: I believe I would only require about 10 minutes to
15 contact appellate counsel.

16 IO: Okay.

17 CDC: If for some reason I need more time than that due to
18 where they are at, I will let the Court know.

19 IO: Okay. Thank you. With that----

20 CDC: And then, I am sorry. The other thing with regards to
21 the verbatim transcript. We would request and Defense Appellate
22 Division has requested that we obtain a verbatim transcript in
23 order for ACCA to make the ruling.

1 IO: I would join in that request, noting that my authority
2 does not extend to that. But I join in the request that a
3 verbatim transcript of today be prepared.

4 TC: Sir, the prosecution will take that request to the
5 Convening Authority.

6 IO: Do we have anything further? Counsel?

7 TC: No, sir.

8 CDC: Nothing from the defense.

9 IO: This hearing is in recess.

10 [The Article 32 hearing recess at 1347, 16 December 2011.]

11 [The Article 32 hearing was called to order at 1509, 16 December
12 2011.]

13 IO: This hearing is called to order. All parties present
14 when the hearing recessed are again present.

15 Before we reconvened, the counsel and I had a brief
16 session in which we discussed various issues including the
17 mechanics of the defense's filing a writ with the Army Court of
18 Criminal Appeals concerning my determination or my determination
19 as to the defense's recusal request. As part of that
20 conversation the defense requested that I make an essential
21 finding of facts supporting my determination and I will now do
22 so.

23 IO: I have previously stated the test for recusal as
24 stated by my legal advisor. In addition to making these

1 findings of fact and my conclusions of law on the record today,
2 I intend to append a written determination to the report of
3 investigation.

4 First, as a civilian, I am employed by the Department
5 of Justice as a Deputy Chief in the Criminal Division's Child
6 Exploitation and Obscenity Section. My section does not handle
7 cases involving conduct of which PFC Manning is accused.

8 Second, I was not aware of the specifics of DOJ's
9 investigation into the WikiLeaks matter before reviewing
10 materials in my role of as Investigating Officer.

11 Third, I sent emails to counsel concerning this matter
12 from my usdoj.gov email account.

13 Fourth, I stated the reasons for my denial of the
14 defense request to produce the DOJ file in this case in my
15 written determinations as to defense requested evidence.

16 Fifth, while I am employed as a civilian by the
17 Department of Justice that is investigating this matter, no
18 aspect of my Department of Justice work in the Child
19 Exploitation and Obscenity Section is involved with or otherwise
20 relates to the allegations against PFC Manning.

21 IO: Sixth, I made written determinations as to defense-
22 requested witnesses in writing based on my determinations as to
23 whether the expected testimony was necessary to make an informed
24 recommendation as to the truth of the charges, the form of the

1 charges, and the disposition of the charges; and also determined
2 whether witnesses were reasonably available. I also considered
3 whether the expected testimony was cumulative to the testimony
4 of other witnesses.

5 Seventh, after my legal advisor called me on 15
6 December 2011 to discuss R.C.M. 405(f)(11) and 405(a)(1)(C) to
7 ensure that I was properly considering them, I reconsidered my
8 earlier determination as to three defense requested witnesses.
9 During that conversation my legal advisor made no
10 recommendations as to my determinations on defense requested
11 witnesses.

12 Eighth, my determination as to the defense's closure
13 request was made after consulting my legal advisor and providing
14 his advice to the parties. That determination was consistent
15 with the legal advice I received. I provided the reasons for
16 that determination in writing, applying R.C.M. 806(b)(2).

17 Ninth, my determination as to my ability to consider
18 statements under penalty of perjury under 28 U.S.C. §1746 was
19 made after consulting with my legal advisor and after providing
20 his advice and cases and legislative history he provided me to
21 the parties; and my determination was consistent with my legal
22 advisor's advice. I provided that determination in writing to
23 counsel via an email on 14 December at 1418 [hours]. I did

1 limited research into the matter before seeking my legal
2 advisor's advice.

3 IO: Tenth, I conclude that a reasonable person knowing all
4 the above facts would not conclude that my impartiality might
5 reasonably be questioned.

6 Counsel, at this point is there anything further to
7 address?

8 TC: Sir, the United States would like to just reflect for
9 the record that also during the recess that the trial counsel
10 contacted the Special Court-Martial Convening Authority and
11 advised him of the defense's request for a verbatim transcript
12 and the Investigating Officer's concurrence and the trial
13 counsel's concurrence. He ordered the verbatim transcript to be
14 created but only for the sole purposes of the filing this writ;
15 and it will only include the portions of this hearing up to this
16 session. It will be produced tonight.

17 IO: Thank you, trial counsel.

18 Defense?

19 CDC: Nothing further from the defense.

20 IO: Okay. At this point, we are in recess.

21 [The Article 32 hearing recessed at 1514, 16 December 2011.]
22 [The Article 32 hearing was called to order at 1528, 16 December
23 2011.]

1 IO: This hearing is called to order. All parties present
2 when the hearing recessed are again present.

3 At this point we are going to continue with the
4 introductory advisement pending the matter that is being
5 presented to the Army Criminal Court of Appeals through the writ
6 process. Then we will recess and we will reconvene tomorrow
7 morning at 1000 hours.

8 PFC Manning, I want to remind you that my sole
9 function as the Article 32 Investigating Officer in this case is
10 to thoroughly and impartially gather, weigh and evaluate all the
11 relevant facts of this case, and to make a recommendation
12 concerning the disposition of the charges which have been
13 referred against you.

14 Excuse, me. Do you have a copy of the charge sheet?

15 ACC: Yes, sir. I do.

16 IO: Okay. One second.

17 TC: Sir, here is a copy.

18 IO: That is okay.

19 [The hearing briefly paused while the Investigating Officer
20 retrieved a copy of the charge sheet from chambers.]

21 IO: I apologize.

22 IO: I have before me the charge sheet containing the
23 charges which I have been directed to investigate. I understand
24 you have a copy. Do you want the charges read to you?

1 ACC: No, sir.

2 IO: Do you understand what you are charged with?

3 ACC: Yes, sir.

4 IO: PFC Manning, I advise you again that you do not have
5 to make any statement regarding the offenses of which you are
6 accused and that any statement you do make may be used against
7 you in a trial by court-martial. You have the absolute right to
8 remain silent regarding the offenses with which you are charged.
9 You may, however, make a statement either sworn or unsworn and
10 present anything you may desire, either in defense, extenuation,
11 or mitigation. If you do make a statement, whatever you say
12 will be considered and weighed as evidence by me just like the
13 testimony of other witnesses. Should you choose not to make a
14 statement, I will not draw any adverse inference from your
15 silence.

16 You have previously been given a complete copy of the
17 investigative file that has been compiled in your case. It
18 contains many documents as they were provided, both to me and to
19 your defense team by the government. I have previously notified
20 both your defense team and the government of the witnesses and
21 evidence that I wanted produced and the government counsel,
22 Captain Fein, has indicated those witnesses and evidence will be
23 presented at this hearing.

1 IO: PFC Manning, before proceeding further I now ask you
2 again whether you have any questions concerning your right to
3 remain silent, the offenses of which you are accused, your right
4 to make a statement either sworn or unsworn, the use which can
5 be made of any statement you do make, your right to cross-
6 examine witnesses against you, your right to present anything
7 you may desire on your own behalf and your right to have me
8 examine reasonably available witnesses requested by you either
9 in defense, mitigation, or extenuation.

10 Before continuing, I note that classified information
11 may be--well, first do you have any questions regarding any of
12 those things I just stated?

13 ACC: No, sir.

14 IO: Before continuing, I note that classified information
15 may be presented during this investigation. All participants in
16 this investigation should remain aware of their duty and
17 responsibility to protect any and all classified information
18 entrusted to them; and also of their responsibilities in
19 accordance with the three protective orders applicable to this
20 investigation. Should the need arise during testimony to
21 discuss classified information, the participants should notify
22 the IO and the Court Security Officer so that a determination
23 can be made whether to close a portion of the hearing for such
24 classified testimony. Additionally, should any participant be

1 aware that testimony appears about to discuss classified matters
2 in an unplanned fashion, the participant should immediately
3 inform the Investigating Officer so that a determination can be
4 made about whether to close a portion of the hearing.

5 IO: Are there any other matters for me to decide?

6 TC: No, sir.

7 CDC: Nothing from the defense.

8 IO: Okay. We are then in recess until 1000 tomorrow
9 morning.

10 [The Article 32 hearing recessed at 1532, 16 December 2011.]

11 [Court Reporter's note: Summarized transcript format from this
12 point forward under previous order of the Special Court-Martial
13 Convening Authority.]

14
15 [The Article 32 hearing was called to order at 1037, 17 December
16 2011.]

17
18 **SPECIAL AGENT TONI GRAHAM, U.S. Army, was called telephonically
19 as a witness for the government.**

20
21 The Investigating Officer instructed the witness to speak
22 up and inquired as to whether she was somewhere where she would
23 have privacy.

24
25 The witness informed the Investigating Officer that she was
26 located and her office and that there was no one else in the
27 building.

28
29 Assistant Trial Counsel 2 inquired as to whether the
30 witness had any notes on materials that were relevant to this
31 case in front of her.

32
33 The witness informed Assistant Trial Counsel 2 that she did
34 in fact have some notes that were relevant to this case in front
35 of her. She provided the numbers that were stamped on the
36 bottom of the documents.

37

1 Assistant Trial Counsel 2 instructed the witness that if
2 she was asked any questions anticipated the need to disclose
3 classified information to respond that she should inform the
4 Investigating Officer before responding.

6 The defense counsel requested that the witness set the
7 notes aside and that if she was to refer to the notes, prior to
8 doing so, inform the Investigating Officer.

DIRECT EXAMINATION

Questions by Assistant Trial Counsel 2:

13 My name is Special Agent Toni Graham; I am currently the
14 Chief Warrant Officer Two assigned to the 102nd Military Police
15 Detachment, Criminal Investigation Division at the Schofield
16 Barracks in Hawaii.

I have been a CID agent for over 6 years and have been in military law enforcement for almost 12 years. I attended the CID Special Agent's Course, from February until June 2005. The training included gathering and collecting evidence and how to protect, preserve, and collect, computers and electronics, storage media devices for their forensic examination. I was also an MP before I became a CID Agent. As a CID Agent, I have worked at least 100 cases per year for the last 6 years, so approximately somewhere between 600 to 1000 cases.

On 27 May 2010, I received information on the investigation of this particular case from our headquarters at Fort Belvoir, Virginia, which forwarded it over to our Battalion in Baghdad, Iraq. Then we reviewed the information there at our Battalion, which was the 11th Military Police Battalion, Criminal Investigation Division. They received the information from Fort Belvoir, Virginia, which currently transferred over to Quantico. My headquarters got the information from a confidential informant. After I got the information from our Battalion, I confirmed that I could obtain a search authorization from a military magistrate.

I developed a team and an investigative plan for the handling of this case before heading to the location where PFC Manning was deployed at FOB Hammer. The team included me, Special Agent Thomas Smith, he was prior Military Intelligence, and another CID Special Agent. We acquired a Counterintelligence Agent from Langley who also assisted us.

1 From there, we traveled to FOB Hammer and briefed the chain
2 of command and the SJA at that location with certain information
3 we had received. We also provided them with our investigative
4 plans, which was collecting all of PFC Manning's personal
5 computers, government terminals, and searching his workstation,
6 his home, and any other personal storage locations that he had
7 on the FOB.

8 The first investigative step taken upon arrival at FOB
9 Hammer was canvassing his coworkers, supervisors, and any
10 colleagues in the area that knew him and what they knew about
11 him, just so we could have intel on who PFC Manning was, and
12 what he did at the SCIF. We conducted two crime scene
13 examinations while at FOB Hammer, one at his workstation at the
14 SCIF, the S2 section, and also one in his personal quarters.
15 The examination of the SCIF revealed where he was located, where
16 he sat within the SCIF, the computer that he used in the SCIF,
17 and just a general layout of the SCIF itself. The digital
18 evidence that my team collected from that SCIF was two SIPR
19 computers that were assigned to PFC Manning. We also collected
20 one unclassified computer that was reported that he would use
21 from time to time.

22 From his CHU we collected storage devices and computers.
23 We also collected his personal computers, a hard drive, a
24 camera, a cell phone, and I believe we collected maybe ten
25 CDs/DVDs that were unclassified/unmarked, and we collected one
26 secret CD that was located within a commercial CD case inside of
27 a US Postal shipping box. A CHU is a containerized housing
28 unit. It is where PFC Manning and his roommate lived. The
29 approximate distance between the containerized housing unit and
30 the SCIF, I would say is about 100 yards, it could be a little
31 more or it could be a little less.

32 It was determined that PFC Manning was moved from this SCIF
33 approximately 2 weeks before we arrived, and he was reassigned
34 to the supply section. In the supply section there was one SIPR
35 and one unclassified computer, which we collected. He was also
36 known to use Staff Sergeant Bigelow's personal computer, Staff
37 Sergeant Bigelow was the supply section NCOIC. We asked him for
38 his consent and collected his computer. It was also determined
39 during the course of our investigation at FOB Hammer that PFC
40 Manning had used a paralegal's secret scanner to scan documents
41 twice. We also collected her government computer.

42 We collected the evidence on document vouchers. We
43 collected all evidence on the Department of the Army Form 4137.

1 Not only did we receive authority to seize all the evidence, but
2 we also received authority to search all of the evidence that we
3 seized. We obtained search authorizations for all of the items
4 collected during the course of the investigation for further
5 examination of all the items. We received authorization in two
6 ways; we received it from the Commander for all of the
7 government computers that we collected, and we also received
8 consent from Staff Sergeant Bigelow for his personal computer.
9 Afterwards, we did a search authorization to double check
10 everything, and we listed everything on a search authorization,
11 which allowed us to search all of the items through magistrate
12 consent.

13
14 The case was switched to CCIU, the Computer Crimes
15 Investigative Unit, for them to be the primary investigative
16 agency. It officially happened on 11 June 2010, and on 12 June
17 2010, they initiated a case number. The case was switched,
18 because CCIU is CID's technical experts for computer crimes, and it
19 we determined that the evidence involved computer crimes, and it
20 fit their purview more than it would have ours. When we hand
21 off the physical evidence we do a controlled transfer, where we
22 send all of the documentation that we had collected to the other
23 office. So I first scanned all of the information to them, the
24 unclassified information, and after that we mailed it by
25 registered mail. They have all the paper documents, and as far
26 as all of the physical evidence was concerned they were hand-
27 delivered. From the Baghdad office it was transferred to Kuwait
28 by Special Agent Robinson, who was with CCIU, and from there it
29 was transferred to our evidence custodian who transported it to
30 Virginia.

31
32 **CROSS-EXAMINATION**
33

34 **Questions by the civilian defense counsel:**
35

36 I was the first lead agent that investigated this case. I
37 searched the accused's CHU, I interviewed witnesses, and then I
38 provided input that helped get search authorizations, as well as
39 led to his initial pretrial confinement. In short, I was an
40 essential figure in the early stage of the case, so much so that
41 the government has made me their lead witness today. I found
42 out about today's hearing about a week and a half to two weeks
43 ago. I was asked if I could attend, but I am not there today
44 because I needed approval before I could submit a travel request
45 to that location.

46
47 **OBJECTION**

1 Assistant Trial Counsel 2 objected to the relevance of that
2 line of questioning.
3

4 The defense counsel stated that he was only trying to find
5 out if the government offered to make this witness available for
6 today's hearing. The defense stated they had requested that
7 this witness appear in person so that they would be able to
8 cross-examine her.
9

10 The Investigating Officer stated that he had already made
11 the determination that this witness was not reasonably available
12 due to her location in Hawaii.
13

14 **The cross-examination by the civilian defense counsel continued
15 in substance as follows:**
16

17 Before my testimony today I have reviewed all of the
18 information that I provided CCIU. I do have that information,
19 but I would have to go get it, it is on my desk. I only
20 reviewed the exhibits, not any of the notes before the hearing
21 today.
22

23 The military magistrate gave me authorization to search PFC
24 Manning's CHU. I was the one who sought the authorization for
25 the search, and I was also the one who provided the
26 justification for the search. I do recall signing an affidavit
27 dated 29 May 2010 which was used to support the reasonable
28 belief that PFC Manning had classified information, had sent
29 classified information, and would attempt to send more
30 classified information. I have reviewed the affidavit within
31 the last two weeks. In the second paragraph, it states, "PFC
32 Manning is believed to have unlawfully obtained and released
33 sensitive data including, but not limited to, TS/SCI and cable
34 clearance documents onto the Internet." In the second
35 paragraph, I also talk about the Confidential Informant Agency
36 that brought this information to CID. I do not know when the
37 confidential informant brought that information to CID, I only
38 know when I received the information, and that was 27 May 2010.
39 I received it from my headquarters at Fort Belvoir which sent it
40 to my Battalion at Baghdad, and I received it the same day.
41

42 The third paragraph mentions, "a classified video of an
43 Apache weapons team airstrike on 12 July 2007 which was
44 subsequently found and reported by Reuters and is to this date
45 available for viewing on the Internet. The video depicted an
46 Apache helicopter firing upon civilians is released to the
47

1 public on or about 5 April 2010." I remember that. The last
2 paragraph of the five paragraph affidavit that justified the
3 search authorization, Stars & Stripes published an article
4 called, "A Wiki for a World of Secrets," on 27 May 2010. That
5 was in my affidavit, because I thought it was ironic that it was
6 in the newspaper the same day that we received the request and
7 the fact that we received it from a confidential informant and
8 it was also in the military news. It just shows that
9 information was leaked, which Bradley Manning was saying that he
10 did, was leaked and now over 5 billion people have viewed, and
11 these five billion people or five million people, whatever the
12 number was, are all unauthorized individuals. And they are
13 unauthorized because they saw the video of the 12 July 2007
14 attack of the Apache weapons team, because it was leaked onto
15 the website.

16
17 I used the above information to obtain a search and seizure
18 authorization for the search of PFC Manning's work terminals and
19 a search of his designated living area, which would be his CHU,
20 for any and all electronic media storage equipment/devices.
21 Those were the reasons that I gave to get the search
22 authorization, but there are other reasons that I gave that are
23 not in that affidavit due to the nature of their classification.
24 The five that were just mentioned do appear in my affidavit, and
25 that is a sworn affidavit that was provided on 29 May 2010.

26
27 In the first paragraph, I stated that, "TS/SCI information
28 had been leaked onto the Internet." I stated that because that
29 was information that I was provided with at that time. I don't
30 know exactly what CCIU has received from the evidence that I
31 collected, I can only say that was the information that I had at
32 the time that provided that affidavit. In the second paragraph,
33 that was simply just background information about the
34 confidential informant. The third paragraph talks about a
35 classified video of an Apache weapons team. I did not know that
36 video was an unclassified video. There were several things that
37 the confidential informant provided us that would support an
38 affidavit for probable cause for the search and seizure
39 authorization that I received. I was taking the word of this
40 confidential informant that the video that I received was
41 classified information. I could not verify that, I could verify
42 that Bradley Manning was deployed to FOB Hammer, he was in the
43 military, he did have a top secret clearance, and he was a
44 military intelligence analyst. The information that was
45 provided to me that was information that I provided to the
46 military magistrate to support my probable cause request. I did
47 not know for sure whether PFC Manning was penetrating smil.mil

1 and sgov.gov networks for over a year, but I do know that he was
2 deployed as of November 2009 or sometime around that timeframe
3 through at least May 27. I can't say for sure that he was doing
4 it for over a year, but I do know that he was a military
5 intelligence analyst for over a year, that was the job he was
6 supposed to do. I wrote that based off the affidavit of the
7 information that we received from the confidential informant
8 that had direct communication with PFC Manning. Using this
9 information that we just went over, the military magistrate
10 authorized a search of the CHU, and I found things that I just
11 discussed with Captain Overgaard, one being the DVD label 12
12 July 2007 chopper Reuters with the secret label on it. The DVD
13 had a secret label on it, and you are not supposed to have
14 classified information in personal areas. This should not be
15 outside of the SCIF unless he had Courier orders. He should not
16 have had that CD in his CHU in the first place. At that time I
17 did not know that that video, and honestly still I am not sure
18 if the video was unclassified when he released it. In my search
19 of his CHU I only inventoried the items that I seized. We came
20 across information that discussed gender identity disorder. We
21 came across a folder that your client had printed about gender
22 identity disorder, but I don't remember any articles in
23 particular. I'm not sure whether or not he printed those
24 articles while he was deployed. I do not recall a medical
25 pamphlet from Canada that provided information for people living
26 with gender identity disorder because I wasn't really focused on
27 that.

OBJECTION

31 Assistant Trial Counsel 2 objected to the relevance to this
32 line of questioning.

34 The Defense Counsel stated that he was first trying to see
35 how thorough the investigation was conducted of the accused's
36 CHU as well as the CID investigation as a whole. But also,
37 gender identity disorder would be relevant in that whether PFC
38 Manning had diminished capacity at the time of the alleged
39 offenses, which would also help to explain the circumstances
40 surrounding the commission of this alleged offense.

42 The Investigating Officer stated that the objection is
43 overruled, instructing the defense counsel to focus on the rest
44 of the investigation.

46 The CROSS-EXAMINATION the civilian defense counsel continued as
47 follows:

I remember seeing several things about homosexuality and gender assignment, but I really was not focused on that. I was only focused on the gathering and disseminating of classified information aspect of the investigation. I am a criminal investigator, so I only focus on that. Yes it is nice to know everything about someone when you are interviewing them so you can get to know them and talk to them, but I was not focused on that particular aspect of his life because we had already advised him of his rights and he invoked. I left that information in his room because it was not particular to my investigation. I was the one that determined that it was not particular to my investigation.

OBJECTION

Assistant Trial Counsel 2 objected to the relevance of this line of questioning.

20 The Investigating Officer sustained the objection stating
21 that this line of questioning expands beyond the investigation.
22 The Investigating Officer instructed the defense counsel to
23 continue with the line of questioning as to it applied to the
24 investigation.

26 The CROSS-EXAMINATION by the civilian defense counsel continued
27 as follows:

29 We skimmed through the information in the folder and then
30 we put it to the side with the rest of his belongings. Anything
31 that didn't pertain to the specific reasons why we were there
32 for the investigation we set it to the side.

34 We concluded that it didn't pertain to the investigation
35 because we already knew prior to arriving at FOB Hammer that PFC
36 Manning was a homosexual and that he was interested in those
37 topics. My team and I conducted several canvas interviews and
38 we interviewed approximately 5 people on sworn statements,
39 everyone else was canvas interviews. All of the interviews were
40 done face to face. I do believe that PFC Manning did not have a
41 lot of friends in the unit, he had very limited amount of
42 friends.

OBJECTION

46 Assistant Trial Counsel 2 objected to the relevance of this
47 line of questioning.

The defense counsel stated that he was going through the steps in which the special agent conducted her interviews.

The Investigating Officer granted the defense counsel limited leeway for that topic.

The cross-examination by the civilian defense counsel continued as follows:

I did not ask the people during my interviews whether or not PFC Manning was gay. They did not bring it up during the interview, in fact I still think that the Army policy at the time was don't ask don't tell. No one that we interviewed in a unit mentioned to us that he may have had behavioral health issues. We did not find that out until later on in the investigation.

I have never attended a pretrial confinement hearing, and I did not attend the pretrial confinement hearing that was done for PFC Manning. I was aware that there was a pretrial confinement hearing on 29 May 2010. I do know that I drafted some paperwork for them. The information that was contained in affidavit was the information that I had at the time I drafted the affidavit.

REDIRECT EXAMINATION

Questions by Assistant Trial Counsel 2:

At the time that I made and signed the affidavit, the information was received from a confidential informant who had direct contact with PFC Manning.

OBJECTION

The defense counsel objected to Assistant Trial Counsel 2's line of questioning stating that it was leading the witness.

Assistant Trial Counsel 2 stated that the rules do not apply at an article 32 hearing.

The Investigating Officer stated that he realized that the rules do not apply but asked that Assistant Trial Counsel 2 use open ended questions.

1 The redirect examination by Assistant Trial Counsel 2 continued
2 as follows:

4 The information that I based the majority of the affidavit
5 on was provided by the confidential informant, who had direct
6 contact and communication with PFC Manning. To verify the
7 information given to us by the confidential informant we were
8 able to run military checks which is basically finding out who
9 PFC Manning was, what he did in the military, and certain
10 background things on FaceBook. Also, I believe the FBI had
11 direct contact with the confidential informant, and the FBI is a
12 reliable source in our investigation or in any investigation
13 that we do. So the confidential informant reliability was
14 verified in my mind.

At the time, I thought the Apache to be classified, and, even at the time I was conducting the investigation, I believe everyone was under the assumption that it was classified information. I don't know when it was unclassified. There was evidence that it came from a classified system, I spoke to a captain in the S2 section, who said that when she returned from block leave in April 2010, she had a conversation with PFC Manning about the Apache video that was leaked.

OBJECTION

27 The defense counsel objected to this line of questioning
28 stating it was hearsay. The defense counsel went on to say that
29 hearsay is allowed in an Article 32 hearing if the source is
30 deemed reliable.

32 The Investigating Officer overruled the objection.

34 The redirect examination by Assistant Trial Counsel 2 continued
35 as follows:

I believe her name was Captain Martin, who worked in the S2 shop, when she returned she had a conversation with PFC Manning where they discussed the leaked video that was on the news. PFC Manning informed her that he thought the video was real, she said, "No, I do not believe the video is real." So at that point he sent her an e-mail on SIPR, pulling the video from their SIPR shared drive and e-mailing it to her so she could compare it to the news article. In my mind it meant that video was on the SIPRNET at that time, so it was secret.

1 The Investigating Officer informed the government of his
2 determinations concerning evidence, that the defense has certain
3 objections concerning the CID case file and that one of them was
4 based on authentication, that he would consider documents
5 subject to authentication.

The defense counsel stated that it was strange that the Investigating Officer would tell the government that it was their chance to get a document authenticated to this witness.

Investigating Officer stated that he was simply reminding the parties of the determinations that he has made and objections that were made concerning evidence.

[The witness was permanently excused, duly warned, and ended the phone call.]

SPECIAL AGENT CALDER ROBERTSON, U.S. Army, was called telephonically as a witness for the government, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

25 Questions by Assistant Trial Counsel 2:

I am the special agent in charge of the Europe branch office, CCIU, department CID. I have been a special agent for CID for 10 years. As a CID agent, I have worked about 350 cases. I have been a CCIU agent since March 2006 and that is the Computer Crimes Investigative Unit. CCIU's primary mission is the criminal investigation of intrusion and related malicious activity involving U.S. Army computers and networks. I have had approximately 660 hours of training at the Defense Cyber Investigative Training Academy. The training included pretty much everything from this is a computer all the way up to conducting full forensic examinations. I am currently a certified Digital Forensic Examiner. I have worked approximately 120 cases as a CCIU agent. I became involved in the investigation of PFC Manning in late May 2010 because I was the closest CCIU agent to Iraq. I was notified to travel around that timeframe, it was about 29 May 2010. At that time, I traveled to Iraq in which I made contact with elements of the special Baghdad CID office and the lead investigators. That is when I took control of the digital evidence that had been seized concerning the investigation. I preserved that evidence, conducted preliminary examinations as time permitted, and then ensured that evidence

1 got to the controlling evidence room. I believe the evidence was
2 transported to Camp Liberty by the agent from the central
3 Baghdad CID office that traveled out to question him. It was
4 secure when I arrived. I never traveled to FOB Hammer. Camp
5 Liberty was the best location to do the work at the time; it had
6 the most base and the best security. Captain Cherepko, who is
7 located at FOB Hammer, assisted me. He was the Brigade
8 automation officer and collected some logs for me at FOB Hammer.
9 I believe Captain Cherepko collected or preserved the NIPR and
10 SIPR logs at FOB Hammer. I didn't collect the evidence
11 specifically, at least not the original media. My role was to
12 obtain forensic images of the evidence and then conduct a
13 preliminary investigation if time permitted. Before I started
14 to assess the evidence, I verified that the evidence vouchers
15 didn't have any attachments.

OBJECTION

19 The defense objected stating that if the witness was going
20 to testifying from the documents, the witness needs to have his
21 memory refreshed in the proper format.

The Investigating Officer stated that the rules of evidence do not apply at the Article 32 proceeding; however, if the witness can review the document to testify on the basis of his memory, that would be preferable to him reading from the document, and that once he has finished reviewing the document to set aside his notes.

The witness informed the Investigating Officer that he was finished reviewing his notes and that he has set them aside.

32 The direct examination by Assistant Trial Counsel 2 continued as
33 follows:

The physical evidence that was collected and set aside for me when I arrived was the laptop of Staff Sergeant Bigelow, the personal laptop of PFC Manning, the personal external hard drive of PFC Manning, several optical discs, to include one that was marked secret, we had two SIPR machines and one NIPR machine that were assigned to PFC Manning from his unit, we had a NIPR and a SIPR machine from the supply room where PFC Manning worked for a time, and we had the SIPR machine of the Soldier from PFC Manning's unit. All of the evidence was assessed, and I obtained forensic images of the evidence and then as time permitted conducted preliminary forensic examinations on working copies of the forensic images. At that time, the evidence was

1 sealed for transport to the CID office. Imaging the evidence
2 entails removing the hard drive from the particular device. Or
3 if the hard drive was already out of the device they don't have
4 to remove it, you take the hard drive and connect it to a
5 forensic computer. For this investigation, I was using forensic
6 laptops, so I connected it to the forensic computer, at that
7 time you use a program called, "ENCASE," to obtain a forensic
8 image. A forensic image is a bit for bit copy of information
9 that is on the device, and then we move a copy off for the
10 collection of evidence and a copy off for transport for
11 redundancy. We do that to ensure that we do not have a
12 catastrophic loss of evidence en route back to the laboratory.
13 To verify that we made an exact copy we use two different
14 methods; we have an MD5 and a SHA-1 method that produces either
15 a 32 or a 40 character alphanumeric unique representation of the
16 data on the device. In layman's terms, it is a unique
17 representation, a digital fingerprint, of the data that is on
18 the device. The software reports that the forensic image is an
19 exact match of the data that is on the device. We had proper
20 authorization from the military magistrate. I took forensic
21 images from all the devices that I mentioned, and only one of
22 the optical disc, the CD that was seized from PFC Manning's room
23 marked secret. I also did a cursory analysis of that evidence.
24 I had a certain amount of time to perform preliminary analysis
25 on some of the evidence. The goal of a preliminary forensic
26 exam is essentially to give the investigators a head start to
27 come up with any of these that are obvious that you could pick
28 out relatively quickly.

CROSS-EXAMINATION

Questions by the assistant defense counsel.

I was not involved in the collection of the evidence. I did the forensic imaging of that evidence; it was mostly procedural. I collected the hard drives from the laptops, but all of the evidence was collected by other agents. When I traveled from Germany to Iraq to collect the evidence it was all ready for me to do my analysis, that is, of the evidence presented to me secured and sealed. I do not know that this computer was assigned to PFC Manning directly. I took the word from the investigating agents on ground at the central Baghdad CID office. I do not know if his computer was used by other Soldiers, that information would have been discovered during a full forensic examination as I stated earlier. The difference between imaging and analysis is imaging is simply obtaining a copy of all of the data that is on the device. A full forensic

1 examination can take anywhere from weeks to months, that is a
2 scientific process where we go through the media and attempt to
3 determine whatever the forensic request is for. I did
4 preliminary analyses on some of the devices, but I was not
5 involved in the full forensic examination. At the time that I
6 did the forensic imaging my certification was up-to-date and in
7 good standing. All of the forensic imaging that was done in
8 Iraq was done by me with the help of others. Forensic imaging
9 was done by me in Iraq, not at Fort Belvoir. Beyond forensic
10 images, I did a preliminary forensic examination, the
11 information that I found was recorded in the agent investigation
12 report that I referenced. Just to clarify, I did a preliminary
13 report not a full forensic analysis report. Whether or not the
14 computer that I did the forensic imaging on were CAC card access
15 computers would have been brought out during full forensic
16 examination it wasn't something that I was able to pull. I can
17 only say that at least one of the computers was not password-
18 protected, that would be the laptop of PFC Manning, the personal
19 laptop. I did not have Captain Cherepko involved with one of
20 the forensic images. I did have a telephone conversation with
21 Captain Cherepko; I had several telephone conversations with
22 him. I did not, during any of those telephone conversations,
23 instruct Captain Cherepko on how to conduct forensic imaging,
24 and I believe the other individuals from my unit walked Captain
25 Cherepko through the process of obtaining and securing network
26 logs. A good deal of the time, my unit has asked individuals
27 that have IT training or an IT background to obtain network
28 logs. If we are on ground we will go get it ourselves but a lot
29 of the times we have to have those log secured very quickly. I
30 do not recall sending any software products or instructions to
31 Captain Cherepko. During my work on this case, I do not recall
32 coming across any evidence that PFC Manning suffers from gender
33 identity disorder; I don't believe that I am qualified to make
34 that determination. I am familiar with the name Breanna Manning
35 though I cannot say in what context, during my work on this
36 investigation I can't say that I came across any information
37 that would lead me to conclusively say your client created
38 another identity. I know that PFC Manning had a history of
39 disciplinary problems within his unit. I know that PFC Manning
40 referred to himself as fragile in his chat logs, and I know that
41 he had disciplinary problems at his unit; but, outside of that,
42 I don't know. I don't know if PFC Manning was gay; it was not
43 the focus of my investigation.

44
45
46

OBJECTION

1 Assistant Trial Counsel 2 objected to the line of
2 questioning stating the defense counsel needed to focus his line
3 of questioning to specifically the evidence that was obtained
4 and reviewed.

The defense counsel stated that he believed that he was asking whether during the witness's work on this case whether he came across any evidence that indicated the question that was asked.

10 The Investigating Officer stated that the defense counsel
11 needed to keep his questions focused on the investigation that
12 was conducted and what was determined as a result of that
13 investigation. And that since the investigation conducted by
14 the witness could have found information pertaining to the
15 sexual orientation of PFC Manning the witness was instructed to
16 answer the question.

19 The cross-examination by the assistant defense counsel continues
20 as follows:

21 During my work on this case I did not come across any
22 information that would indicate that PFC Manning was gay. I am
23 familiar with what is called the Global Address List. It was
24 not a part of my work on this case. I do not recall coming
25 across any evidence that reference the Global Address List. On
26 the computers that I worked on I found that with some of the
27 computers PFC Manning had an account on those computers. I
28 don't recall there being other user profiles on the computers
29 that I worked on in this case.

BEDIRECT EXAMINATION

34 Questions by Assistant Trial Counsel 2:

Captain Cherepko was the Brigade automations officer. For CCIU, Captain Cherepko secured some network logs, these are essentially the digital communication between computers and devices on networks. To my knowledge, Captain Cherepko did not image anything. I did not travel to FOB Hammer, because it was decided by my leadership that the mission could be handled by the individuals there.

[The witness was permanently excused, duly warned, and ended the phone call.]

1 [The Article 32 hearing was recessed at 1232, 17 December
2 2011.]

3
4 [The Article 32 hearing was called to order at 1349, 17
5 December 2011.]

6
7 The Investigating Officer called the Article 32 hearing to
8 order, and stated that all parties that were present prior to
9 the hearing being recessed are again present. The Investigating
10 Officer then advised the spectators that all media devices were
11 not allowed in the hearing.

12
13 **SPECIAL AGENT MARK MANDER, Computer Crimes Investigative Unit,**
14 **was called as a witness for the government, was sworn, and**
15 **testified in substance as follows:**

16
17 **DIRECT EXAMINATION**

18
19 **Questions by Assistant Trial Counsel 2:**

20
21 I initially became an Army CID Special Agent in 1994. I
22 have been a military agent as well as a Army reserve agent, and
23 now a civilian agent during that time with a break of about
24 seven years total, so approximately 10 years. As a CID agent, I
25 have investigated approximately 200 cases; these were cases that
26 were assigned to me as well as other CID agents. I have been
27 with CCIU for 4 years in February. CCIU agents attend training
28 at an organization called the Defense Computer Crimes Center,
29 and we take courses that relate to collection of digital
30 evidence examination of computers and forensic software as well
31 as computer network investigations, so in total probably in
32 excess of 300 hours of training. I have worked approximately 20
33 cases as a CCIU agent. I became involved in this particular
34 case from the initial notification, which then resulted in the
35 Camp Liberty CID office opening an investigation, and when the
36 investigation was transferred back to CCIU, I was involved from
37 pretty much the beginning. My role was that I was one of the
38 case agents on the investigation. Initially, the allegation was
39 that there was a Soldier in Iraq that was committing various
40 crimes and CID typically by policy, if there is information that
41 comes into one office relating to another location, it is
42 typically the CID office closest to that location where the
43 suspect is that will initially open up the investigation. So
44 that was the reason why the Camp Liberty office initially got
45 it. It was transferred to CCIU because after the Camp Liberty
46 CID office did their initial investigation it was determined
47 that there was going to be a need for federal magistrate search

1 warrants to compel companies such as Google and other providers
2 in the United States to provide information. And a federal
3 magistrate or federal judge would not be available to the agents
4 and Iraq, generally speaking. Additionally, there were going to
5 be CONUS based leads, people that we want to talk to for
6 information to be gathered in the United States as well as the
7 technical subject matter was most suited to CCIU. The majority
8 of the evidence was hand carried by the evidence custodian from
9 the CID element in Iraq to Dulles International Airport when I
10 met him on 11 June 2010, then I personally took custody. We
11 inventoried all of the items that he hand-carried and then I
12 took possession of them and turned them into the CCIU evidence
13 room.

14

15 At this point, we had an investigative plan for this case.
16 Because the investigation was transferred to CCIU before we
17 physically obtained the items that were collected in Iraq, the
18 majority of the investigative plan was based off of the Internet
19 chats between Mr. Lamo and PFC Manning as well as other
20 documents that were obtained from PFC Manning's personnel file.
21 CCIU obtained the Internet chats between Mr. Lamo and PFC
22 Manning from Mr. Lamo. One of the agents in our office had
23 traveled to California to where Mr. Lamo lives and collected a
24 computer as well as hard drives in another computer that Mr.
25 Lamo used and on those hard drives were the versions of the
26 chats. It is my understanding that corresponding versions of
27 the chats were found on the property collected from PFC Manning.
28 In the chats between PFC Manning and Mr. Lamo were mention of
29 numerous subjects, specifically a 2007 Apache airstrike video,
30 there was information about Iraqi war event logs, information
31 about a video of an airstrike that occurred in a place called
32 Gharani, Afghanistan, there was mention of documents pertaining
33 to the detainees at Guantánamo Bay, and the last thing that I
34 remember was the mention of State Department cables.

35

36 The Gharani video was believed to have been on a folder, or
37 a set of shared folders, that was owned and managed by the
38 organization Central Command. Initially, one of the agents from
39 CCIU attempted to go to that location across the SIPRNET network
40 from a computer at CCIU and download those documents. He then
41 took the documents and preserved them on an optical disc and
42 that was collected as evidence. As a result of that, the
43 forensic team at CCIU looked at the collected information and
44 determined that it was not sufficient--there was not a complete
45 copy apparently. So several weeks later, two agents from CCIU
46 were sent to CENTCOM headquarters, in Florida, where they
47 obtained log files as well as copies of the folders the files

1 the documents that we were interested in that were related to
2 the investigation. Several weeks later another agent had gone
3 to CENTCOM and met with the deputy SJA of CENTCOM, Lieutenant
4 Colonel Schmittle, and interviewed him and he provided
5 background information in regards to the Gharani airstrike
6 incident as well as he also provided a password to an encrypted
7 file. In the file name was BE22PAX.zip, and that was believed
8 to be the Gharani airstrike video.
9

10 At the end of July 2010, Mr. Lamo had contacted CCIU
11 related that he had become aware of chats on the Internet that
12 were being conducted by someone he did not know and he could not
13 identify, and the individual is basically bragging that he was a
14 part of the original decryption effort related to that video
15 because it was encrypted as well as the individual had mentioned
16 that he worked for DOE at the time which we believe was the
17 Department of Energy. After several days of follow-up
18 investigation, Mr. Lamo was able to provide additional
19 information which identified the individual who was chatting as
20 a Mr. Jason Katz. We had been in contact with the Department of
21 Energy previously about the information but with the name we
22 were able to identify the person, Mr. Jason Katz, who has been
23 employed at the Brookhaven National Labs, in New York, it is a
24 facility that is run by the Department of Energy. He was
25 employed there from approximately February 2009 until March 2010
26 and we learned that he was fired or terminated from his position
27 in March of 2010, and the reason for the termination was him
28 engaging in inappropriate computer activity on the Brookhaven
29 National Laboratory network. And we learned all of this from
30 the Department of Energy. Additionally, as a part of their
31 investigation into his computer misuse, they had obtained a
32 forensic image of his personal computer, a laptop that Mr. Katz
33 owned, and apparently connected to the network at Brookhaven
34 National Labs. They also obtained a forensic image of the
35 government workstation that Mr. Katz had been assigned. The
36 image of the government assigned computer was through some sort
37 of user agreement that was presumably signed by Mr. Katz on
38 condition of his employment there, as well as the personal
39 computer was also imaged under a similar agreement which he had
40 signed and related something to the effect that any devices or
41 computer connected to the network they would have the ability or
42 authority to search and seize. As a follow-up to the
43 information that I just mentioned CID and the FBI obtained a
44 federal magistrate search warrant to seize and search the images
45 that were mentioned. On the government workstation that was
46 assigned to Mr. Katz, or on the image of the government
47 workstation, when it was examined was a file called B.zip, and

1 within that file was another file called BE22PAX.wmv, which is a
2 video file. The file was encrypted and password protected. The
3 file was believed to be the Gharani video file. The password
4 obtained from the Lieutenant Colonel at CENTCOM opened the file
5 that was found on Mr. Katz's computer, and the file appeared to
6 be the same video.
7

8 About the second week of June, two CCIU agents were sent to
9 the State Department, and they obtained server log files showing
10 all IP addresses or accounts that were connected to the location
11 where the State Department cables were stored. Several weeks
12 later we also obtained the firewall logs from the State
13 Department showing connections into and presumably out of their
14 network. During the initial attempt to get log files in June,
15 one of the personnel who worked at the State Department that was
16 assisting in the effort had also identified that PFC Manning had
17 an Intelink account. Intelink is essentially a search engine
18 that resides on a SIPRNET network that allows us to search for
19 classified documents on the SIPRNET network. Then the CID
20 collected the Intelink logs; there were several efforts to
21 collect logs from Intelink; I went to the office which manages
22 Intelink and collected a disk containing log files from the
23 personnel there. Those log files were based on IP addresses
24 that we believe PFC Manning's assigned government workstation in
25 Iraq had used. I went to, I believe it is the office we've
26 referred to as the ODNI, the Office of the Director of National
27 Intelligence. We also collected logs from the CIA. The other
28 efforts to collect additional logs from ODNI related to the
29 Intelink account of PFC Manning or the IP addresses that he used
30 or keywords that we were interested in knowing if someone
31 searched for them. Yes, we also collected Centaur logs also
32 based on IP addresses that we believe PFC Manning's government
33 workstation in Iraq had used. Centaur is the government's name
34 for essentially what in the industry we would probably refer to
35 as net flow logs, and essentially they are connection logs
36 showing the to or from IP addresses and the amount of traffic
37 and the times and dates at which connections are made to and
38 from government networks.
39

40 About 18 June 2010, I was involved in contacting and
41 interviewing PFC Manning's aunt Ms. Deborah Van Alstyne, she
42 lives in Potomac, Maryland, and that information was identified
43 through Manning's personnel file, because her address I believe
44 was his home of record at the time. Yes, four other agents from
45 CCIU as well as Department of State and I interviewed her. We
46 had traveled to her home and interviewed her in regard to PFC
47 Manning. We discussed a situation that he was involved in that

1 happened 18 June 2010. We discussed a wide range of topics,
2 basically how PFC Manning grew up, his family, where his mother
3 was from, his father, how he had grown up, his time before he
4 had joined the Army, as well as the circumstances which led up
5 to him joining the Army and then we also discussed some contacts
6 she had with PFC Manning while he was in Iraq. Specifically,
7 prior to his apprehension in Iraq he contacted her and asked
8 about the 2007 Apache video in regard to how the release of the
9 video is being received in the United States. The second
10 contact that he had made that we discussed here was shortly
11 after his apprehension by CID in Iraq, he had apparently
12 contacted her and asked her to make a posting to his Facebook
13 page also referencing the 2007 Apache video. We also searched
14 PFC Manning aunt's house since it was listed as his home a
15 record. Again, there were four other agents and I and PFC
16 Manning's aunt identified his property or things that he had
17 left behind before he deployed were contained in a basement room
18 of the home. Three of the agents had gone down to that room and
19 look through the various items that were there. Specifically,
20 we were looking for any digital media or potential packages that
21 he may have mailed that we were aware of that she said that she
22 had received during the time that he was in Iraq. Ms. Van
23 Alstyne had identified a computer in her bedroom that had been
24 powered on and connected to the Internet, belonged to PFC
25 Manning; however, she said that she did not have any access to
26 it and did not know the computer's purpose or what was contained
27 on it, and we collected the computer.

28 Several months later, I believe it was in October, we were
29 concerned at the time about a package that had been sent from
30 the confinement facility in Kuwait where PFC Manning had been
31 held. It was our understanding that when PFC Manning was
32 apprehended, after his apprehension he was transferred to Kuwait
33 and placed in a confinement facility in Kuwait. As procedure,
34 they collect all of your personal items, clothing, your wallet,
35 things of that nature, and they are then placed in the
36 container. We were concerned about those items because we
37 didn't know if perhaps there could be something in those items
38 of value to the investigation. So we made every effort to get a
39 military magistrate search authorization to look into that
40 container. Unfortunately, due to administrative issues, that
41 could be completed prior to PFC Manning being transferred to the
42 United States to another confinement facility. As a result of
43 his transfer, the standard operating procedure for the
44 confinement facility is to ship that personal container with the
45 personal items to the prisoner's home of record. So, based on
46 that, we had identified that that box had been received by his

1 aunt; it was signed for by PFC Manning's father and consequently
2 we made another attempt to contact her to see if she had
3 received that box, if it was still intact as well as also
4 concerned about potentially looking for any other items that may
5 be in the basement room since it was several months from the
6 initial investigation, we knew more about the case at that
7 point. The aunt had basically saved the box. The container of
8 the personal items that was shipped from Kuwait was intact in
9 the box that they were sent in. The box had been unopened. She
10 also allowed us to go into the basement room and conduct another
11 search of any items that may be of value. During the initial
12 time that we had been out to PFC Manning's aunt's house in June,
13 we had been in the basement room, prior to her mentioning the
14 computer upstairs. In June, basically there were items thrown
15 about, clothing, books, various things; there was no
16 organization. The second time that we had been to her home she
17 had organized all of PFC Manning's personal items into plastic
18 containers and during the process of looking through those items
19 those containers and furniture we identified numerous pieces of
20 digital media various memory cards as well as hard disks and
21 various optical media discs and all of those items were
22 collected. Of the various memory cards there was one card which
23 was an SD memory card which contained various bits of
24 information but some of the information was classified.

26 During the search, myself and Special Agent Wilbur, who
27 also works at CCIU, had split up the room into two parts and
28 each of us searched one half, and as we identified digital media
29 we would photograph it where it was found and then all of the
30 digital media was placed on the bed that was in the room and at
31 the end of the search we asked Ms. Van Alstyne if she could look
32 at the items and ensure that all of those items were the
33 property of PFC Manning versus one of the other family members
34 or herself, because we didn't want to collect any extraneous
35 property that was not related to the case. All the items that
36 were collected she verified as belonging to PFC Manning to
37 include the SD card.

CROSS-EXAMINATION

41 Questions by the assistant defense counsel:

I was a case agent on this case. Normally, in a CID investigation you have typically one agent who was assigned the case. They are the case agent and generally manage the leads and other investigative activity involved in the case. However, this case was unlike any other case that I have been involved in

1 my career as a CID agent, in that it was fairly complex, there
2 were numerous locations where activity occurred, investigative
3 activity, as well as the case was very high profile case. In
4 this particular instance, I would describe myself as the case
5 agent on paper; however, supervisors took a more active role in
6 kind of managing the case such as leads and information related
7 to the investigation. Generally speaking, either Special Agent
8 Ames, who was the acting special agent in charge of our office,
9 or Special Agent King, who was the acting operations officer.
10 What I did in this investigation was I secured search
11 authorizations, to do interviews of unit members and others, and
12 performed administrative tasks, and on the first item I would
13 say not just search authorizations but federal magistrate search
14 warrants as well. In some cases, such as the computer that was
15 mentioned that was taken from the first visit from PFC Manning's
16 aunt house, we actually collected the computer with her consent
17 and then obtained a federal magistrate warrant afterwards and
18 then we were able to search the contents of the computer, but
19 generally speaking yes we would obtain the search authorizations
20 or warrants first and then collect the items later. I did not
21 perform any of the analysis that was done on the media that was
22 found in Iraq by Agent Shaver, Mr. Johnson, or Special Agent
23 Williamson. And that would include the chats there were
24 discovered from Mr. Lamo, the mention of the information about
25 the detainees at Guantanamo Bay, the Gharani video, the cables,
26 and the July 2007 Apache weapons team strike. I did not conduct
27 analysis to get the information. I was not the agent that went
28 to look at the paths for the Gharani air strike, and that same
29 agent had to go to CENTCOM headquarters, that was not me, I
30 believe it was Special Agent Wilbur from CCIU and at this time I
31 do not remember the other agent's name; however, all of that
32 should be in the various reports that were published on those
33 activities. Later on, when an agent went back to CENTCOM
34 headquarters to talk to the deputy SJA, that was not me, that
35 was Special Agent Ames. Special Agent Ames was my supervisor at
36 that time the other agents were peers, coworkers. I was not the
37 team leader that directed those other agents to go and do
38 different tasks. Mr. Lamo was primarily contacted or interacted
39 with Special Agent Edwards of CCIU, and in regards to Mr. Katz I
40 do not believe that any members of CCIU directly contacted Mr.
41 Katz, I believe that was the FBI. I do not know when Mr. Katz
42 had or how he obtained the zip file or the .wav file that I
43 mentioned earlier. Mr. Katz, as far as I know, didn't contact
44 Mr. Lamo. I don't know if they had any direct communication. I
45 do not know if they ever spoke at all. Mr. Lamo probably
46 started cooperating with CID at the end of May 2010; he had
47 provided us the information which initiated the investigation.

1 I did not accompany either group of agents that went to the
2 State Department in the first group agents that went there to
3 collect log files and then the other files provided to us by the
4 State Department. I did not do the forensic analysis, I did not
5 do the leg work as far as the Gharani airstrike, the stuff
6 dealing with Mr. Lamo, or the cables; this is just information
7 that I hear because I was part of the team. I did go collect
8 Intelink logs, and I did follow up on of the CONUS leads. When
9 I went to go see PFC Manning's aunt and we talked about a wide
10 spectrum of things involving PFC Manning.

11 That information, about how he grew up and why he joined
12 the Army, did not appear to be relevant to our investigation, it
13 may have been the reason why they asked us to find out if there
14 is any information that would identify or be of evidentiary
15 value, such as previous foreign contacts, maybe friendships that
16 he had with foreign nationals, things of that nature. Because
17 at the beginning of this investigation, when were we talking
18 with PFC Manning's aunt, there was a great deal of concern that
19 there could be a foreign intelligence service involved. My main
20 purpose in conducting the interviews was to look for information
21 to prosecute PFC Manning or others who may be involved. I
22 thought it was relevant to look into PFC Manning background as a
23 child and right before he joined the Army, because that could
24 give me some leads. In one of the things that we identified I
25 believe it was through his military records was that he had
26 lived overseas over in the UK and nearly immediately prior to
27 joining the U.S. Army. In the course of this investigation
28 there were approximately 100 people interviewed by CID. In
29 several instances we would call back for a follow-up interview.
30 We interviewed some people five or six times and they became
31 irritated by the amount of times that we interviewed them, but
32 it is not typical for us to call someone back five or six times
33 and as I mentioned this is not the typical investigation. One
34 of the issues that we had was that when people were initially
35 interviewed, we had not, in some cases, conducted any forensics,
36 or in other cases, we have conducted forensics, and they will
37 still ongoing. So what would typically occur was the agents who
38 were conducting the forensic examinations would identify
39 information that they thought would be relevant, maybe an e-mail
40 sent to someone, or some other bit of information that we would
41 then go back and contact people that we have spoken to before
42 with new information to ask them about so that would be the
43 reason why we have spoken to people numerous times. At one
44 point this was the only case that I was working on personally.
45 Probably from 9 June until probably sometime in November I would
46 think, full-time. I had other cases that I had prior to this

1 case beginning and I would try to keep up with those to try to
2 keep those moving forward. There are several other people that
3 are identified as civilians which I believe the FBI has the
4 primary responsibility for as far as investigating further those
5 people were identified as potentially involved, I don't know the
6 status of those investigations those are with FBI as well as
7 depending on if you want to consider the founders, owners, or
8 managers, of the website WikiLeaks involved. It is my
9 determination that the founders and managers of WikiLeaks were
10 involved in this case. They are involved in certain aspects.
11 It would depend on which charge we are talking about there were
12 some things that he had done that I believe he could've done by
13 himself that do not involve others and other charges would
14 require some interaction with others. From my law enforcement
15 background, training, and experience, I do believe with your
16 client possessed the ability to upload hundreds of thousands of
17 documents to the world from his CHU in Iraq. He could have
18 uploaded it to an infinite number of websites. To me, the
19 capability would include a connection to the Internet, the
20 information, and the knowledge to do so and I say that he does
21 possess all three of those. He would not require the
22 cooperation of the person who ran the website if he was the one
23 who owned the website. I do not remember if he did possess a
24 website which would allow him to do that while he was in Iraq.
25 Well let me rephrase that I do believe at one point that there
26 was some discussion about a Mobile Me account which is an Apple-
27 based cloud computing type area that you can post files to. I
28 did not find any evidence that PFC Manning had done that. Mr.
29 Lamo had contacted CCIU and indicated that an unknown individual
30 was chatting with someone else that I believe he knew in some
31 regard. I don't know if he had ever met that other person. The
32 other person was boasting that he was involved in an effort to
33 decrypt a video file. I am not fully aware of how Mr. Lamo came
34 to the information. The initial information which started the
35 investigation was brought to our attention from an individual
36 that Mr. Lamo had talked to. As a matter fact, there were two
37 avenues which this information was reported. Mr. Lamo had
38 apparently told a gentleman that he worked with on some type of
39 project as well as he also told the individual that was a friend
40 of his that had been formerly in the Army and both of those
41 individuals independently contacted law enforcement. The person
42 that he knew that used to be in the Army contacted the FBI and
43 the other individual contacted CID by sending an e-mail to us,
44 to our office account. It was not an anonymous tip because he
45 left his name. I am not aware of any benefit that Mr. Lamo
46 received. At the beginning of the case, in the investigation,
47 when CCIU first received it from Camp Liberty it was only the

1 Army CID and the Department of State that were looking into the
2 matter. And at some point, I would have to go back and look at
3 the investigative case file, the FBI became involved as a joint
4 investigation. The State Department was involved nearly
5 immediately because of the nature of the information that was
6 contained in the chats seemed to be fairly obvious that involved
7 classified data which belonged to the State Department, so they
8 were brought in very early, I think maybe a month into the
9 investigation, when CCIU had begun the case is when the FBI
10 became involved. It may have been a little bit shorter, I have
11 to go back and look at the case file. I know that we had spoken
12 with advisers from the Department of Justice early on in the
13 investigation and I know that one of the US Attorney Offices was
14 involved in doing some investigative activity. I believe the US
15 Attorney Office that was involved was the Eastern District of
16 Virginia. Their advisers along with us had ongoing discussions.
17 Their practices ranged from kind of knowing their best practices
18 and kind of how to investigate this type of case with classified
19 information. The US Attorney Office was advising the U.S. Army
20 CID. I would say that they were considered the experts in this
21 type of investigation.

22

23 **EXAMINATION BY THE INVESTIGATING OFFICER**

24

25 When PFC Manning was confined in Kuwait there was an
26 attempt to get a search authorization for his material there but
27 that didn't occur. Essentially, we identified that there was
28 this container, these items, his personal effects, and we had
29 contacted the Kuwait confinement facility and asked them about
30 being able to search through those items, to obtain those items
31 and have them sent directly to us, but probably more likely we
32 would have had an agent from one of the CID offices in Kuwait go
33 there and collect items directly. It's my understanding that
34 they said that we would need to have some type of search
35 authority to do that. So to follow that we contacted a military
36 magistrate in Kuwait and described the circumstances and
37 attempted to get a magistrate search authorization from them,
38 and what occurred from that was some type of a legal
39 disagreement in regards to the magistrate felt that we did not
40 need a search authorization to search those items because PFC
41 Manning was in custody and they believe that we would have the
42 ability to search those items due to his status as being
43 confined. That led to going back to the confinement facility
44 and them saying that it was true but only in regards to issues
45 of safety and security. For example, in prison his property
46 could be searched for weapons or contraband things of that
47 nature that relate to violations of his confinement status, but

1 when it comes to an investigative matter, things that are
2 outside of things related to safety and security, then you would
3 need to have a search authorization and about the time that we
4 figured that out essentially PFC Manning had been transferred
5 and the possessions were no longer there.

6

7 **REDIRECT EXAMINATION**

8

9 **Questions by Assistant Trial Counsel 2:**

10

11 Forensic examinations of the digital media that is
12 collected is generally kind of a slow process of looking through
13 items, especially if there is a lot of data to look through. As
14 items of investigative importance were identified on digital
15 media they would provide this information to the investigative
16 team which would then take that information depending upon what
17 it was contact the appropriate person--coworker of PFC Manning,
18 friend, relative, and then asked them if they knew about that
19 bit of information. I cannot think of any specific examples at
20 the moment, but that was how our process worked during the
21 initial stage of the investigation. We were trying to identify
22 all of the evidence or testimony related to this investigation
23 that would show what occurred.

24

25 [The witness was temporarily excused, duly warned, and
26 withdrew from the courtroom.]

27

28 The defense stated that based upon the testimony of the
29 witness who just testified, they requested that the
30 Investigating Officer compel the production of collateral
31 investigation evidence from the government.

32

33 The trial counsel responded by stating RCM 701 does not
34 apply until referral of this case, and that the government does
35 not have approval from the Department of Justice or the FBI to
36 turn over such files if they exist, but the Department of State
37 case file has been turned over to the defense.

38

39 The Investigating Officer did not take the defense request
40 stating that the collateral investigation evidence was not
41 necessary for the Investigating Officer to conduct a thorough
42 and impartial investigation.

43

44 [The Article 32 investigation recessed at 1443, 17 December
45 2011.]

1 [The Article 32 investigation was called to order at 1459,
2 17 December 2011.]
3

4 Investigating Officer called the hearing to order, and
5 stated that all parties that were present prior to recess were
6 again present.
7

8 **SPECIAL AGENT TROY BETTENCOURT, United States Treasury**
9 **Department, was called as a witness by the government, was**
10 **sworn, and testified in substance as follows:**
11

12 **DIRECT EXAMINATION**
13

14 **Questions by Assistant Trial Counsel 1:**
15

16 I began working for the Treasury Department just this
17 month. I am assigned to the computer forensics team providing
18 computer forensics support in support of criminal investigations
19 into civil and criminal infractions. Before I started working
20 for the Treasury Department I used to work for the Army's CID,
21 Computer Crimes Investigative Unit, I actually have two tours
22 there. One of my tours was from November of last year until
23 December of this year and then the other tour was from 2001
24 until 2005. On my last tour I was a special agent assigned to
25 the intrusion team and was primarily assigned to this particular
26 investigation. I do have a background in computers. I have
27 received training from both government and commercial providers
28 specifically. I have earned my computer evidence recovery
29 specialist certification from FLETC at the federal law
30 enforcement training center in Georgia, I earned my network
31 security certified professional certification from learning
32 center international, my EnCase certified examiner certification
33 from guidance software, my access data certified examiner
34 certification from access data, as well as a digital media
35 collector certification from the DC3, the defense cyber crime
36 center. I have testified before in a computer crimes case in
37 front of a federal grand jury for an international computer
38 hacking investigation and then multiple times in support of
39 general crimes, drugs, and sex crimes investigations.
40

41 WikiLeaks was founded in 2006 by Julian Assange, he is an
42 Australian national. They describe themselves and Mr. Assange
43 describes them as an intelligence agency of the people.
44 Basically, they aren't bound to any government or corporate
45 entity, sort of like an open source intelligence repository.
46 About the same time that the organization was established and
47 the website was established, the website solicited submissions

1 of information that would be of interest to them specifically at
2 the time - for classified, censored, or otherwise restricted
3 information. You can go to the WikiLeaks website, they have a
4 link that you can click on to submit. Once you went to the
5 submission page you will see a button that would allow you to
6 browse your computer looking for the documents you wish to
7 submit. It's sort of like attaching a document to a web-based
8 e-mail. Once you clicked on that you identify the documents on
9 your computer then hit submit and the website would transmit
10 those documents to WikiLeaks via encrypted communication HTTPS.
11 WikiLeaks is basically a website, the technical side of it is.
12 They reported their servers being all over the world. They have
13 identified locations in Sweden, Iceland, England, Germany,
14 Texas, so they have multiple servers, sort of like disaster
15 planning. Make sure that if one server goes down they have
16 others to back them up; in fact they used the Amazon servers for
17 a period of time. Essentially the physical base of operations
18 is wherever Mr. Assange is located. So currently, England where
19 he is awaiting possible extradition. He did for a period of
20 time use Iceland as a base of operations. Since early 2010,
21 WikiLeaks has been a big proponent of the initiative in
22 Icelandic called the Icelandic modern media initiative.
23 Iceland's Parliament would reform certain laws within Iceland to
24 make it more favorable to journalists. They've described it as
25 sort of making Iceland akin to journalism what Switzerland is to
26 banking. WikiLeaks did solicit information that they were
27 looking for, they published an updated list, which they would
28 frequently update on their website, broken down by country of
29 what information they wanted. They called that their, "Most
30 wanted list."

31 The image on the screen looks like the most wanted leaks
32 page, it said 2009, so by the archives it looks like 30 August
33 2009. Websites change over time, there is an Internet archive
34 one of them is called, "Way back machine," and what they do is
35 that they periodically create snapshots of certain websites on
36 the web and at any time you can go back and query the archives
37 to see what was posted on a particular day that they archived.
38 That image is another one from 2009, based on the URL, the
39 archived date for it was May 22, 2010. That is as it appeared
40 on the web on 22 May 2010. That image is the list and the date
41 is 5 November 2009, and that is as it appears the date that the
42 snapshot was taken by the Internet archive. The list is broken
43 down by particular countries that they are interested in and
44 under the country grouping and under the country name they will
45 have specific documents pertaining to that country. And they
46 have a United States section as well. Intellipedia is

1 essentially the classified intelligence community's version of
2 Wikipedia, if you're familiar with it. A place to sort of get
3 information, it is sort of a fairly good resource updated by
4 intelligence professionals. Also, Opensource.gov, which is the
5 CIA open source center. As you can see there is basically an
6 unclassified database where the CIA gathers open source
7 information from around the world and publishes it in that
8 location. Further down, you will see a federal politics section
9 and then under military intelligence you will see a few things
10 that pertain to this investigation. As you can see it is
11 focused primarily on the military and intelligence community you
12 will see that stuff pertaining to CIA, detainee interrogation
13 videos. Further down there are some rules of engagement
14 pertaining to Iraq and Afghanistan. You will see references to
15 Camp Delta for their standard operating procedures as well as
16 their interrogation standing operating procedures. That's
17 referring to the operation at Guantánamo Bay. If you scroll
18 down a little further I think is the last entry, again it asked
19 for the Afghanistan/Iraq rules of engagement in there. The
20 first one I believe is just for Iraq, the second one has both of
21 them together.
22

23 The Investigating Officer instructed the trial counsel to
24 slow down due to the nature of the material and the amount of
25 material that was being covered at that time.

26 **The direct examination by Assistant Trial Counsel 1 continues as
27 follows:**

28
29 Right below the sixth and seventh bullet down is the Iraq
30 ROE. Then if you go down five more, once again you will see
31 mention of Camp Delta, Guantánamo Bay, the SOP for
32 interrogations, and regular SOPs. Then, two below that you will
33 see Iraq and Afghanistan rules of engagement. And those are the
34 ones that are specifically pertinent to this investigation.
35 WikiLeaks has used social media and they still do, they are
36 fairly active on twitter. Twitter is sort of a very real-time
37 way of providing very short concise updates to people that wish
38 to follow your organization or you as an individual. What we
39 are looking at right now is a WikiLeaks tweet, as you can see in
40 the lower left from January 2010, in this case they are saying
41 that they had encrypted videos of a US bomb strike, and if you
42 click on that link it will take you to a wired.com story about
43 an incident that occurred; it is commonly known as the Gharani
44 incident. The bottom line there, actually it is an expired
45 domain that no longer is active, but at one point I checked the
46 Internet archive and it was a WikiLeaks website. Now the image
47

1 that we're looking at now is a twitter feed, you can see at the
2 top left it mentions WikiLeaks, it has their logo, or one of the
3 logos that they were using and it says that they are looking for
4 a database called, "Treasure Map," regarding IP, meaning
5 Internet protocol addresses that they want access to and it
6 appears that they are soliciting someone to provide it to them.
7 That feed was provided 16 February 2010.

8
9 That image is an additional tweet from WikiLeaks which is
10 dated May 7, 2010, and they are asking for a list of as many
11 .mil e-mail addresses as possible, so meaning e-mail addresses
12 relating to military domains.

13
14 I am familiar with the charges and specifications. 18
15 February 2010, they released a Department of State cable
16 entitled, "Reykjavik 13," it was a Department of State cable
17 that documented what is commonly referred to as the, "Ice Save
18 Incident," it was a failing Icelandic bank that caused some
19 problems between Britain and the Netherlands and Iceland. On 15
20 March 2010, they released an Army Counterintelligence Center
21 report pertaining to WikiLeaks. On 5 April 2010, they released
22 an edited version of an Apache weapons team video of an incident
23 that occurred in Iraq along with the Iraq rules of engagement.
24 They both were released on the same day. WikiLeaks termed it,
25 "collateral murder," that is sort of the common term for it.

26
27 On 25 July 2010, they released what they have called, "the
28 Afghan war diary." It is approximately 76,000 out of 90,000
29 incidents that were in the CIDNE/Afghanistan database. On 22
30 October 2010, they released the corresponding, "Iraq war diary."
31 It is about 400,000 incidents that came from the CIDNE/Iraq
32 database. The reports ranged from 1 January 2004 until 31
33 December 2009. On 28 November 2010, just after Thanksgiving
34 they started to release the Department of State cables, they
35 commonly referred to it as, "Cable gate," and that release
36 continued for quite some time.

37
38 Between 24 April and 21 June 2011, they released detainee
39 assessment briefs, documents pertaining to detainees at
40 Guantánamo Bay, Cuba. In total they released 765 detainee
41 assessment briefs out of 779 they claim to have in their
42 possession. They were released in small batches, large batches,
43 it just sort of trickles out. On 20 August 2011, they released
44 the entire amount of documents in their possession, 251,287
45 Department of State cables and they were in unredacted form.
46 They made that available on the Internet.

CROSS-EXAMINATION

Questions by the civilian defense counsel:

During our work on this case we did work with other law enforcement agencies. We worked with the FBI, we worked with the Department of State, and we worked with ICE. I interviewed many individuals as part of my investigative work; I would say more than ten. We interviewed individuals pertaining to this case that were part of PFC Manning's chain of command, or served with him, or contractors, basically people that knew him. I interviewed all but one with other agents. I believe there were only CID agents present during the interviews that I conducted, I don't recall anyone else being present. I did take notes during interviews. None of the interviews were audiotaped or videotaped. What determined whether an interview was going to be audiotaped or videotaped was partially facilities, if it was available, we do have to get approval from our supervisor. In this case there were no audio or video statements taken. During my work on this case I did come across evidence showing that PFC Manning did desire to create an alter ego of Breanna Manning. He had an e-mail address; I believe he may have had two, but at least one that I know of. He had a Facebook profile also name Breanna; there is an e-mail that he sent to his chain of command showing him dressed as a woman. So yes, we were aware of that. During my work on this case I was aware that PFC Manning was gay. I have served in the military, I served for 12 years. During my investigation on this case I did not find any evidence that showed PFC Manning had ties to a terrorist group. There was evidence that indicated PFC Manning could be interested in politics. There were several individuals, I would have to look at my reports to see which ones, very often people in the SCIF said that downrange they would have discussions pertaining to politics, just sort of passing the time and he would be active in those discussions. There were times during the investigation where I saw evidence that suggested PFC Manning exhibited odd behavior. There was an incident where he assaulted his supervisor and received punishment for that. And there was another incident when he threw his computer monitor off the table in sort of a fit of rage, and then there was an incident where a member of the unit found him curled up in a ball while downrange.

44 I would say that I have an opinion but my opinion is
45 definitely colored with the benefit of hindsight. I would like
46 to think that had I been in the chain of command I would have
47 done things differently. Ideally, I would have been aware of

1 everything we now know as far as his behavior to prevent him
2 from deploying. Again, that is with the benefit of hindsight.
3

4 **REDIRECT EXAMINATION**
5

6 **Questions by Assistant Trial Counsel 1:**
7

8 I was a CID Agent, I had to sign a nondisclosure agreement.
9 I do have a government security clearance. I do believe
10 individuals have a personal responsibility to safeguard
11 classified information.

12 **OBJECTION**
13

14 The defense counsel objected to the line of questioning
15 stating relevance as to what this agent might believe at this
16 point regarding responsibility, guilt, or anything regarding my
17 client.

18 The Investigating Officer sustained the objection stating
19 that the trial counsel can ask the witness if he believes that
20 individuals have an obligation to secure classified material,
21 questions as to guilt or innocence are not for the witness.

22 [The witness was temporarily excused, duly warned, and
23 withdrew from the courtroom.]

24 BRIAN MADRID, Civilian, was called as a witness for the
25 government, was sworn, and testified in substance as follows:
26

27 **DIRECT EXAMINATION**
28

29 **Questions by Assistant Trial Counsel 2:**
30

31 I retired in the middle of September 2010; I served in the
32 Army for 22 years. I was a 35T, which is a Electronic Warfare
33 Military Intelligence System Integrator and Maintainer. I
34 worked on all of the MI collection systems, computers networks,
35 communications equipment, and we were also evolving into the
36 exploitation of captured enemy equipment such as PDA, laptops,
37 and phones. I was PFC Manning's AIT Platoon Sergeant; he
38 attended advanced individual training at Fort Huachuca. He
39 attended training there, I believe, from April until August
40 2008. I was in the Platoon Sergeant position from between
41 February 2008 until August 2010; that's about 2 1/2 years.
42

1 PFC Manning is a 35F, a Military Intelligence Analyst. I
2 am familiar with the 35F block of instruction. The first block
3 of instructions that they received I believe it is called,
4 "INFOSEC," and it is basically instructing the military analyst
5 how to handle and the safeguarding of classified information. I
6 know that is the first block of instruction because I would talk
7 to the instructors, and students would always come back and say
8 how much they enjoyed the class. In order to attend that AIT
9 they have to have an interim TS/SCI security clearance. The
10 accused was required to do corrective training in AIT. I believe
11 that was in June 2008. Some Soldiers had come to me one
12 afternoon explaining that Private Manning had been posting
13 videos on YouTube, and he was using words such as top secret,
14 secret, classified, and SCIF which he was taught not to do.
15 Allegedly, there were three videos; because of the limitations
16 with our local network, we had YouTube blocked, so we had one of
17 the Soldier's laptop and used the wireless Internet to see one
18 of the videos. The video was of him inside of his barracks room
19 speaking about his daily life; then he began to branch off onto
20 subjects like well I work at this secret SCIF, I handled this
21 classified information, using buzzwords like that. The
22 corrective training at the time that he was required to do a
23 presentation to the company, and whenever we had the Soldiers do
24 that type of corrective training, he would have presented it to
25 us first to ensure that the Soldiers were going to present an
26 informative product. I also had him present me with a type
27 memorandum stating that he basically understood that he wasn't
28 supposed to do that type of thing. He wasn't supposed to expose
29 himself, a person with clearance with access to that type of
30 information. The presentation in front of the unit was about
31 information security, how to handle it, and especially if you
32 are a person with access to this type of material you are not to
33 expose the material or that you have access to it. And that it
34 can be dangerous to personnel that are in the military and that
35 there are people, enemy forces that are trying to collect
36 information on the US military. The substance of the type
37 product was basically what secret information is, the type of
38 people that are trying to collect against the government such
39 as, foreign governments, enemies, spies, hackers, items like
40 that. The PowerPoint was very similar to the written product
41 but it had more reference to regulations. He did three total
42 types of corrective training—the presentation in front of the
43 platoon, the PowerPoint, and the memorandum.

44
45
46
CROSS-EXAMINATION

47 **Questions by the civilian defense counsel:**

The AIT course Intel analyst is 16 weeks and 3 days. And part of the AIT instruction is done in the classroom, and part of that instruction is done in the field. Me being a platoon Sergeant I had anywhere from 140 to 150 Soldiers. I do get to know an occasional Soldier depending upon the situation, there are some Soldiers that you have to dedicate a lot of your time to, and then there are some Soldiers that are really low maintenance. I generally get to know most of them. It would be a fair assessment to say that I do not get to know them all very well. The training that they received consisted of a lot of training, there is a lot of training compacted. I don't think that is unreasonable to say that it is firehose mentality. This is the initial course for someone being trained as a military intelligence analyst. At the end the AIT students conduct a ten-day field exercise. Once they complete that then they graduate and go on to their first duty assignment. Once they graduate they have a basic understanding they are by no means an expert in that field. The expertise for the Intel analyst comes as they learn on-the-job training through time. After I watched that video I showed to Captain Ogletree, the video did not discuss any specific operational security, but he was using the buzzwords top secret, classified, words of that nature. This video was intended for friends and family, that was the target audience. I do not recall him saying anything about him missing his family but I do recall him talking about barracks life in the video. Those buzzwords in and of themselves are not classified, they are pretty well known. Just referencing those words in the video is not a security breach because it referenced those words and he was an AIT student he had to do some sort of corrective training. I personally do not have any ability to suspend his clearance, even though he was counseled for this incident he did not lose his security clearance over it, had it been suspended he would not have been able to complete his training.

BEDIBECT EXAMINATION

39 Questions by Assistant Trial Counsel 2:

41 Those Soldiers are taught not to use those buzzwords
42 because if they were to identify themselves to outside personnel
43 they give themselves an element of possible compromise.
44 Somebody on the outside could find out that they had a security
45 clearance, they could target the individual because they have
46 access to a certain level of information.

OBJECTION

The defense counsel objected and asked the Investigating Officer to voir dire the witness.

The Investigating Officer granted the defense counsel's request.

VOIR DIRE

I am not a 35F trainer. I was an AIT platoon Sergeant who was in charge of those students. I had nothing to do with the setting up of classes, but I sat through a class. I did not do any of the instruction for those students.

The defense counsel objected stating that this witness was not an expert in the training of the AIT students.

The Investigating Officer instructed the trial counsel to lay a proper foundation before asking those types of questions.

The redirect examination by Assistant Trial Counsel 2 continued as follows:

I did not sit through all of the classes that the students attended but I sat through about 3 or 4 classes for each block, and the length of each block varied. I did sit through the first portion of instruction which discusses classified information. And in that first block of instruction they stated that you can't transmit classified permission to someone who is not authorized to have it.

[The witness was permanently excused, duly warned, and ended the call.]

CAPTAIN STEVEN LIM, Division East, Fort Meade, Maryland, was called as a witness by the government, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

I am the deputy G2 for 1st Army Division East, here on Fort Meade. I plan, resource and train Reserve and National Guard Soldiers on intelligence training before they deploy. My branch is military intelligence. It is our job to present comprehensive

1 intelligence products to our commanders so we can make decisions
2 on whatever he needs to decide on. From my job, we take
3 different forms of intelligence and create a product consisting
4 of multiple forms of intelligence to meet the commands needs and
5 to help him make a decision on whether it be to move on a
6 certain mission or to move forces to a certain place or not.
7 The product we give him will help to make that decision.

8 I had been an intelligence officer for five years. I have
9 been in the Army for 9 1/2 years. Prior to this I was an air
10 defense officer. I attended the military intelligence officer
11 transition course and the military intelligence officer course.
12 The transition course was designed to give those officers who
13 were not military intelligence to a good introduction of MI and
14 how works the basic forms of it. The Captains career course
15 also known as the advanced course gave us graduate-level classes
16 on intelligence preparation of the battlefield and to perform
17 other duties as future Battalion S2 or intelligence officers, it
18 also gave us a little background on Company Commander. I was an
19 infantry Battalion S2 officer for 2-14 Infantry, 2nd Brigade,
20 10th Mountain. And I was the 2nd Brigade Combat Team S2, 10th
21 Mountain Division. I was also double hatted as the assistant
22 Brigade S2 and the MI Company Commander 2nd Brigade, 10th
23 Mountain Division. I have been deployed three times, two times
24 as an intelligence officer. All of my deployments had been to
25 Iraq. The last two deployments were with 2/10 Mountain. I
26 arrived to 2nd Brigade in March 2006. A Battalion S2, my job
27 was to use my small staff of intelligence analyst to provide him
28 a combat ready intelligence so that we could conduct combat
29 related operations. It is also accurate to say that the S2 is
30 the Intel officer for the organization. I was in 2nd Brigade,
31 10th Mountain Division as a Company Commander. My first duty
32 was taking care of Soldiers within my company and their welfare,
33 for tactical employment it was my job to manage the MI company's
34 collection assets, because once we deployed we were directly
35 underneath Brigade, and my assets were at the Brigade's disposal
36 for collection. I met Private First Class Manning at Fort Polk,
37 in July 2009. I was confused about the rotation because we did
38 two rotations about six months apart. Originally in 2008, we
39 were scheduled to go to Afghanistan and then after we attended
40 our first JRTC rotation our orders changed to Iraq and we had to
41 go back to JRTC to recertify as a unit. JRTC stands for the
42 Joint Readiness Training Center, at Fort Polk, it is where major
43 units go to validate their mission rehearsal exercise prior to
44 deployment and to become certified to deploy. When I met PFC
45 Manning at the second rotation we were practicing to go to Iraq,
46 because we were on our way to Iraq shortly after.

1 During the rotation I was the MI Company Commander but I
2 was also pulled into the Brigade S2 shop, to serve as the
3 assistant Brigade S2 at the same time. PFC Manning was an Intel
4 analyst within the Brigade S2 shop. He handle all sorts of
5 intelligence, his MOS is 35F. Some of the prerequisites for a
6 Soldier to become a 35F is to have to graduate basic training,
7 and then successfully pass AIT, and with that comes a top secret
8 security clearance as well. Generally speaking you have to have
9 good credit, good background information, as far as no past
10 felonies, a character in good standing. You have to be an
11 American citizen as well. Usually to become a 35F for any
12 intelligence MOS you have to have a higher GT score than other
13 specialties. Generally, they are smarter than most Soldiers.
14 35F should receive basic intelligence preparation of the
15 battlefield MI systems, collection assets capabilities,
16 resources, and some basic security training as well.
17

18 Collection systems are different forms of defense systems
19 whether it is aerial forms or ground-based systems that the
20 military uses to conduct intelligence analysis. The system that
21 all-source intelligence analyst use is the Distributed Common
22 Ground System Army, it is simply a laptop terminal hooked up to
23 a server where intelligence analyst has all the resources to
24 conduct a good analysis at his disposal using multiple databases
25 standard Microsoft office suite and other geo-plotting software
26 as well. This system is found on the SIPRNET network, which
27 stands for basically a secret network. They should receive some
28 security training, basic classification principles, how to
29 properly mark and understand classification data. When you're
30 doing research on your pulling information from different places
31 you're making sure the information that you hold is labeled
32 correctly from what you pulled it from. Labels are classified
33 properly, if you pull something from a secret document, you have
34 to make sure the document is labeled secret. They do show up
35 trained in recognizing those documents from AIT. I'm not 100%
36 on sharing of information. In order for an Intel analyst to
37 share classified information with someone else they have to
38 ensure that that person has the proper access or clearance to
39 read said material. That is something that a 35F in general
40 should know, due to the fact that we deal with more classified
41 material than most other MOSSs. The 35F is the enlisted
42 equivalent to my branch.

43
44 There is a multitude of systems that Intel analysts use, we
45 fly UAVs also we also have other ground-based assets that talk
46 to airplanes and pull data that way. There are multiple
47

1 databases that we datamine through to pull information to do
2 specific work. Datamining, is a simple process of conducting
3 research through multiple avenues taken a database and plugging
4 in certain words trying to narrow down exactly what you are
5 looking for through a big amount of data.

7 When you're making a product for your Commander you need to
8 tailor it to exactly what he is looking for, sometimes that
9 requires searching for one specific person place or thing. Some
10 of the resources that I found on the SIPRNET that we used to
11 datamine are CIDNE database, query tree, Intelink, and other
12 smaller databases that are out there also. It is the combined
13 information data network exchange, it contains reports of all
14 kinds, everything from human intelligence reports patrol
15 debriefs, civil affair debriefs, State Department Provincial
16 Reconstruction teams debriefs, and a whole lot more. The CIDNE
17 database is not just used by Intel analyst. It is used by almost
18 everyone nowadays there is even medical personnel that are
19 filing IED traumatic brain injury reports in there as well. 35F
20 use CIDNE to datamine. Intelink is a secret version of what we
21 call Google. You click on a search box type in a word you enter
22 and then you get a swath of links that match the word that you
23 search for. And on the SIPRNET the information would be secret
24 information. 35F use CIDNE and Intelink, in a combat
25 environment every day, to include the multiple deployments to
26 Iraq. There is a distinction between combat environment and a
27 garrison environment because the duties differ pretty
28 drastically. In a garrison environment intelligence Soldiers
29 are more likely doing administrative based jobs, physical
30 security, personnel security, assisting with the processing of
31 security clearances for other Soldiers, assisting on inspections
32 of subordinate units and not as much analysis and a garrison
33 environment. So a 35F in garrison is typically at the Brigade
34 and Battalion level assisting other Soldiers and getting their
35 clearance. They should be doing a QA/QC for specific data to
36 make sure that it all lines up, passes the test and then working
37 with the higher headquarters who processes the security
38 clearance to get updates status reports, has it made it through,
39 and he rejects, any errors, what do we need to fix. The QA/QC
40 stands for quality assurance quality control. A good S2 shop
41 would always have Soldiers staying current on events, the
42 majority of units will start really focusing on the enemy as
43 they are ramping up towards deployment 4 or 5 months out, it
44 depends. I do not remember a whole lot about PFC Manning. We
45 were very undermanned during that rotation, I was working long
46 hours, so I don't remember a whole lot about him. A multitude
47 of individuals rely on the work product of 35F. I know that the

1 Commanders rely on the products that Intel analyst give them
2 because as a Battalion and Brigade S2 it was my job to make sure
3 that he had those products in his hand that he request.
4

5 If we are conducting an operation somewhere what we would
6 do would be provide only the historic information for that area
7 historic enemy activity attacks sniper, ID and stuff like that
8 combined with other reporting of that area. We are going to put
9 it all on a product, I will probably assign it to a team leader,
10 a team leader would then assign it to one of his Soldiers to do
11 and then we will go through and make sure along the way more
12 QA/QC progress charts, make sure the product is in line with the
13 Commander's intent and then once it was complete more often than
14 not I would take it and conduct any final analysis and follow-up
15 with the team leader on the analyst who worked on the product
16 and make sure it was the we need to be and then presented to the
17 Commander in some form of briefing. After that JRTC rotation
18 the next time that I worked with Private Manning was once we
19 deployed to Iraq at the end of 2009.
20

21 I became the Brigade S2 in January 2010. The original
22 Brigade S2 was relieved and sent to a transition team to work
23 with Iraqi's. He was moved to that position because he couldn't
24 properly explain information the way the Commander needed it, so
25 they put me in the position instead. We were primarily enemy
26 focused supporting our troops on the ground at the same time you
27 were partnering with Iraqi Army and Iraqi police exchanging
28 information helping them build their training in intelligence.
29 PFC Manning was on the Shia threat team, because we had both
30 Sunni and Shia threats in our area. That type of work entailed
31 focusing mainly on specific areas where we had Shia threat based
32 out of conducting analysis of certain type of attack patterns
33 and also analyzing other forms of reporting. This office was
34 located on FOB Hammer but my actual office was located in the
35 command group. PFC Manning and the rest of the S2 shop was
36 located in what we call the SCIF, it stands for sensitive
37 compartmented information facility. Only the signal
38 intelligence Soldiers had direct access to top secret
39 information. In an unclassified environment they specifically
40 worked on signals intelligence products they received specific
41 training above and beyond what in all-source intelligence
42 analysts would do. All source intelligence analysts could have
43 access to top secret information but not direct access. I could
44 not get on the computer that was on a top secret network. There
45 was a network that was present that had top secret access. There
46 were multiple networks that had that type of access.
47

1 We had SIPRNET and NIPRNET, which is a secret
2 classification network and an unclassified network. SIPRNET was
3 the network that the all source intelligence analyst used every
4 day. The computers that we have were on an internal network, I
5 know this because we will all network to a classified hard
6 drive. Individuals in the Brigade S2 were authorized to remove
7 classified information from the computers we had to take
8 information that was releasable to Iraq, specifically classified
9 for that. We had to take the information to give to
10 translators, to translate products in Arabic so that we could
11 release the information to Iraqi Soldiers. It was a specific
12 caveat with our mission there we partner with the Iraqi's there
13 was information that could of been specifically releasable to
14 Iraq which means that we were authorized to release the
15 information to Iraqi military. That happened all the time
16 almost every day. Because that was part of our mission was to
17 train and share information with the Iraqis. The Shia posed
18 typical threats gunshots, sniper attacks, and direct fire and
19 the most lethal was IED attacks. It was common to our Brigade
20 at the time. When we first started out it was more than when we
21 left but approximately 1 to 5 attacks a day. They were able to
22 pull the significant activity of historic events from the CIDNE
23 database and conduct analysis of any type that was necessary.
24 PFC Manning had to do this type of research. He also had to
25 research the effect of IED's.

26
27 An individual cannot create that work product without
28 understanding what they are looking at. Because as intelligence
29 analyst we make a product based off of what the Commander needs
30 we are not going to create a product of something that we don't
31 understand, and that is true for even the junior Soldiers.
32 Private Manning's strengths was he was very good at statistical
33 analysis putting numbers together creating graphs showing
34 historical events over time which would in turn help us to do
35 pattern analysis. He was very good at putting their data on to
36 a system we call Arc map, which is just a simple digital map to
37 give a visual picture of what his analysis portrayed.

38
39 The statistical analysis part is a little bit easy, but
40 actually being able to manipulate the system the way he did was
41 not easy to me it was a very challenging system to use. It
42 could be referred to as data mining. It was difficult to use
43 because it was a very technical system, we didn't use it a lot
44 it was kind of a perishable skill and it wasn't just simple as
45 clicking and shopping and dragging it took some technique to
46 use, it took a lot of practice.

1 PFC Manning weakness was public speaking or briefing trying
2 to get a point of course specifically. PFC Manning used CIDNE,
3 query tree, the biometrics database and a whole bunch of other
4 networks. I don't think there was a need for him to use Net
5 Centric Diplomacy. I don't know what that is.

In my office classified information is protected by first and foremost we had a cipher lock on the outside within access roster so those who do need to have access didn't have the code to get in. The second was the top secret being in the back and only those certain Soldiers had to login to get on system. Nothing preventing a Soldier from burning a CD for their own purpose, because we can watch every single person twenty-four hours a day, we were just too busy to do that. And I believe that there comes a level of trust with a top secret clearance when you are awarded one, and we all signed a nondisclosure agreement stating that we would not do that.

16 From my knowledge Specialist Padgett was the nighttime
17 supervisor and I believe he was counseling PFC Manning on
18 arriving late and PFC Manning flip the table and it stopped at
19 that. The outcome of that was we gave PFC Manning some down
20 time so you can cool off and then someone took him to behavioral
21 health. We did not remove them from the SCIR at that time, I
22 was not in charge so it was not my call, I can only guess that
23 it wasn't drastic enough to fully remove him we also needed the
24 analysts to help us continue the work. When I came back from
25 environmental leave PFC Manning was no longer working in the
26 SCIE he was working in the supply section for our headquarters.

31 His security clearance was flagged with derogatory
32 information, so it was recorded within his files and his
33 security clearance, and he was also charged with UCMJ. This all
34 stemmed from his assault on Specialist Showman. We moved him
35 out of office because we felt that it was not good for him to be
36 around the other Soldiers in it was not safe for the other
37 Soldiers. I have had other Soldiers that have minor
38 disciplinary problems but I didn't remove them from the office,
39 depending on the case, most people are able to be rehabilitated.

OBJECTION

The defense counsel objected to the line of questioning stating relevance.

The trial counsel stated that it is an element of sixteen specifications.

1 The defense counsel renewed his objection stating that the
2 witness should not be asked the question to make the ultimate
3 conclusion on that.

The Investigating Officer overruled the defense counsel's objection.

9 The direct examination by the trial counsel was continued as
10 follows:

12 Yes I do believe what PFC Manning has done has brought
13 discredit upon the armed forces.

CROSS-EXAMINATION

I entered the Army in 2002. I was assigned to 2nd Brigade since 2006. My duty position at that time was to be Battalion S2. I have been in my current branch since 2005 the end of 2005, which is an all source intelligence officer. I switched over from air defense artillery. MI Commander is multiple platoons, it is Brigades collection assets, there is a human intelligence platoon, there is a UAV platoon, a signal intelligence platoon, and other comes packaged, and a simple headquarters.

The original guidance for selecting personnel who were not deployed with the Brigade was we would take all able bodies pending medical issues that prevented them from deploying. The order was given for us to take as many people downrange as we can. In order for me to take someone off the list off the deployment I would have to submit it up to the chain of command. The Brigade Commander was the approval authority to leave someone behind.

Once we deployed I was the MI Commander and the assistant Brigade S2, in October 2009. As the assistant Brigade S2 it was my job to attend meetings that the S2 was not able to attend and to brief the S2 on all the information that he needed. Once we deployed I have very little interaction with HHC, 2nd Brigade, my NCOIC dealt with them. Yes two shops to go will for the unit that was leaving when we deployed in October, and I also worked as the assistant Brigade S2 from October 2009 until January 2010, then I became the Brigade S2, and so for about a month I had three jobs. So in the beginning of February 2010, I was freed up to just do the job of Brigade S2. I was assigned at the Brigade because at the time I was the assistant Brigade S2

1 so I was the next in line, and I believe that my command felt
2 that I was qualified to do the job. The major that had a job
3 before me was removed which is not common in a deployed
4 environment.

5
6 My office was not in the SCIF, I worked within the command
7 group, the SCIF was a very far from where I worked at. I had
8 about ten analysts working for me in the S2 shop. From the
9 beginning of the employment the person in charge of the night
10 shift were Specialists, and towards the end of the deployment
11 the NCOIC in charge of the night shift was a Sergeant First
12 Class. It was a NCO on the night shift because we didn't have
13 any more NCOs to be in charge of the night shift. When we first
14 started our deployment PFC Manning worked the night shift with
15 no NCO supervision. I worked with PFC Manning during the
16 deployment. This was not his first duty assignment he had been
17 assigned to Fort Drum he had been in the Army for a few years.
18 Other than a standard training that they do it the Brigade I am
19 not sure what the training PFC Manning had.

20
21 Once we arrived in Iraq we got some additional training on
22 classification and then a few of us got even more training after
23 that. The class was not designed for the Soldiers it was
24 designed for the senior leadership. I will work with PFC
25 Manning occasionally, to give him more guidance.

26
27 The goal of the night shift was to do the task that the
28 dayshift could not complete, and to do more research. We had
29 two teams on the night shift the Sunni team and the Shia team.
30 During the deployment PFC Manning was promoted specialist, due
31 to it being his time to get promoted, basically it was automatic
32 due to the amount of time he served in Army. PFC Manning was
33 very good at using the computer programs for his job but he was
34 not good at giving briefings. If PFC Manning didn't know what
35 to do he would stop working and sometimes it would take him all
36 along time to complete this task, but that is a common
37 occurrence with junior analyst. PFC Manning was not one of my
38 better analysts he was moved to the dayshift so he can get more
39 guidance. Then he was eventually moved back to the night shift
40 but I do not know the reason why.

41
42 Major Clausen was moved out of the S2 position, from what I
43 was told, because he could not convey the information to the
44 Brigade Commander. Major Clausen was not a hands-on leader he
45 went into the SCIF a couple of times a day, but he let Master
46 Sergeant Adkins run the SCIF. When I took over he did not
47 briefed me on any administrative issues. At the time that I

1 took over I was not aware of any emotional issues with PFC
2 Manning other than what I had observed from working around him.
3 I was not present when PFC Manning had that emotional outbursts,
4 but I heard about it. Both of these emotional outbursts occur
5 before I became the Brigade S2. During the incident with SPC
6 Padgett I was told of a lot of things that happened but not
7 everything that happened, like the computer being broken due to
8 PFC Manning flipping the table over. I was not told that PFC
9 Manning had to be restrained due to the fact that others believe
10 he was heading towards the weapons rack during the incident.
11 Had I been told about this incident I would not have considered
12 it a minor incident. I would consider that an incident that
13 should have resulted in derogatory information in his file, and
14 if the proper authority being so it could have resulted in the
15 termination of clearance.

16 After the incident I believe PFC Manning received a
17 negative counseling and was taken to behavioral health. I do
18 not know if the personnel involved reported this incident up
19 higher. I do recall saying that I gave my input to the chain of
20 command, but other actions were taken. Had I been the Commander
21 at that time I probably would have done derogatory information
22 in his file if the appropriate personnel wrote statements, when
23 I gave this information to the chain of command they did not
24 follow it. I did not hear about the incident where Master
25 Sergeant Adkins was counseling PFC Manning and he became
26 emotional and shoved the chair.

27 I do know that Master Sergeant Adkins wrote several
28 memorandums regarding the emotional problems of PFC Manning.
29 I've seen those memorandums after PFC Manning was detained. I
30 do not know why it was Master Sergeant Adkins who was handling
31 all the issues with PFC Manning. He had a sensing session and
32 Soldiers talk about grievances in the shop, mostly complaints
33 about the need to enforce the NCO support chain. There were
34 complaints about Master Sergeant Adkins stripping everybody in
35 leadership positions of their leadership roles.

36 I received a letter of admonishment and in that letter it
37 indicated that I should have been aware that Master Sergeant
38 Adkins usurped the responsibilities of first-line and midline
39 supervisors when dealing with day care and discipline of
40 enlisted Soldiers. When I read those letters I was shocked, I
41 was shocked that he did not share those memorandums with the
42 chain of command before. I counseled Master Sergeant Adkins as
43 soon as I read those memorandums, because he forwarded me an e-
44 mail from PFC Manning that was sent to him months earlier.

1 In the e-mail PFC Manning stated that he was suffering from
2 issues with his gender identity and how it affected him in his
3 duty performance and impacting his ability to actually think,
4 also attached to the e-mail was a picture of PFC Manning dress
5 as a girl. Master Sergeant Adkins did not send that e-mail to
6 me until after the arrest of PFC Manning. Based upon the e-mail
7 I knew immediately that PFC Manning had issues with his gender
8 identity, that the chain of command should have known, and that
9 he should have been removed from the SCIF. Had it been informed
10 of the e-mail and everything that happened after the e-mail was
11 sent PFC Manning definitely would not have been in the SCIF and
12 as the Brigade security manager, Master Sergeant Adkins had a
13 duty to report derogatory information of anyone. The
14 memorandums that Master Sergeant Adkins shared with me predated
15 the deployment, and the privilege of having a top secret
16 security clearance is basically an ongoing thing. The S6 could
17 have turned off PFC Manning access to computers almost
18 immediately if they were instructed to.
19

20
21 Somebody told me that there was a standard operating
22 procedure for the SCIF, but I'd never seen, if there wasn't one
23 that will be a problem. In order to get a SCIF accredited you
24 have to have an SOP and ours was accredited. There wasn't any
25 training on key SCIF rules and regulations. The SSR, the
26 special security representative, they are responsible for the
27 day-to-day management within the security of the T-SCIF. I'm
28 not sure this Master Sergeant Adkins went to any training for
29 the SSR position. The formal training for the SSR position was
30 only about a hundred slides, it can be done within an hour.
31

32 CDs and DVDs that are secret and top secret are supposed to
33 be specifically labeled so they can be easily identified. CD's
34 lying all around the TSCIF, although I have not seen it, sounds
35 about right. The CDs were used for a multitude of things all
36 classified and even though they were not labeled they should
37 have been. Soldiers were only allowed to bring in closed loop
38 music CDs into the SCIF, but I am not sure how that was
39 enforced. So you were allowed to leave the SCIF with writable
40 CDs but it had to be for official purposes only. So we could
41 burn things onto a writable CD but there was a SOP in place
42 instructed them of what they could burn and had to be for
43 official purposes only, and we would review it before they were
44 burned so they didn't have to burn multiple CDs so we can save
45 on supplies, and that happened more often than not.
46

1 Soldiers were able to listen to music in the SCIF, but it
2 had to be on closed loop CDs, or already on the SIPRNET, but
3 that really was and by the rules and it should not have
4 happened. I have also seen Soldiers watching movies in SCIF.
5 Some movies were stored on the SIPRNET. I have seen games
6 stored on the SIPRNET but I have not seen any of my Soldiers
7 playing games in the SCIF due to the fact that we never had time
8 for that sort of stuff. I never heard a Soldier say that they
9 had to add a program to the system for operational purposes.

10 I did not make classification determination as a part of my
11 job, I did make classification decisions. Whoever originated
12 the report or all when we have a particular piece of information
13 is classified the person who generated the report made their
14 classification determination. We would use his intelligence
15 reports for the release to Iraq information. We labeled it, REL-
16 Iraq. We would extract the data and put it on products. We then
17 would put the information below the tear line. The tear line is
18 a quick reference on the document so you know everything below
19 that line is a certain classification and everything above the
20 line is a different classification.

21 The S2 shop worked off the classification guide, and I had
22 not seen anything that was unclassified that was marked
23 classified, but we have had discussions about that sort of
24 thing. We either used the CENTCOM classification guide or the
25 MNCI classification guide, everyone had access to it. Mostly
26 only the foreign disclosure officers used those guides, they
27 were available to everybody. The following disclosure class
28 lasted about an hour and contained about maybe one hundred
29 slides. Over a period of time a document could be deemed
30 unclassified. We put declassification dates on some items but
31 not all of them. There really wasn't a time limit for how long
32 something needed to be classified. The analysts research and
33 create a product, they do lots of reading. A good analyst has
34 comprehensive writing skills, good briefing skills and the
35 ability to think outside the box, and listed the information
36 from various types of databases.

37 The CIDNE databases are similar to the Google function, you
38 type in the word and you got hits. It was the analyst's job to
39 filter down and report the important information. The CIDNE
40 database has all types of information. The analyst use
41 significant acts for historic representation. So in other words
42 significant acts are one big historical database. It is
43 possible that something could be written into significant acts
44 that discusses future operations, but less often. The

1 significant acts are created by usually the forces that are on
2 the ground the unit that it happened to. It would be created
3 for situational purposes, for historical documentation. No
4 personal information is put into significant acts.
5

6 A HUMINT report, which stands for human intelligence
7 report, is a report of one Soldier's interaction with another
8 person. We don't even put names in HUMINT reports because we
9 put numbers, so we definitely will not do it for a significant
10 acts report. Since significant acts are generally reported as
11 soon as the incident happens they are initially wrong, then we
12 might go back and correct information in the significant acts.
13

14 I do know that analysts had access to diplomatic cables. I
15 did not know that those cables were for on the Net Centric
16 Diplomacy. I gave analysts the link through e-mail which I had
17 so they could have access to diplomatic cables. I found out
18 about it from higher headquarters. I sent it out to my analysts
19 because I wanted them to see the bigger picture. I did not
20 restrict them as to what they could look at on that link. There
21 was no sort of password that was required to access that link.
22 The diplomatic cables can be accessed by anybody who has a SIPR
23 account, and they are a lot of people that have a SIPR account.
24 Top secret information is not on SIPRNET.

25 I do recall an equal opportunity complaint being filed
26 during the deployment, it was filed somewhere around March 2010.
27 I believe it had to deal with vulgarity, language and excessive
28 cursing. I never found out what that complaint was about and I
29 never found out who made the complaint either. I talked to
30 Master Sergeant Adkins about the letters that he wrote and I
31 asked him why he didn't share this with the command. He told me
32 that he was trying to handle it himself, and the medical
33 professionals. He should have gave the information to someone
34 who could take care of the situation. Master Sergeant Adkins
35 was reduced to Sergeant First Class by an administrative
36 reduction board. But I don't know the specifics of what was
37 said in that board.
38

39
40 **OBJECTION**
41

42 The trial counsel objected to the line questioning stating
43 that the Investigating Officer knew what a senior
44 noncommissioned officer is.
45

46 **The cross-examination by the defense counsel continued as**
47 **follows:**

1 In the S2 section Master Sergeant Adkins was the highest
2 enlisted person in that shop. He is an individual who sets the
3 tone for what is and is not to be done in that office. Once I
4 had opportunity to read the letters I knew that is not what he
5 did.

BEDIBECT EXAMINATION

PFC Manning was a smart Soldier. He was someone that I could rely on. I did rely on information that he provided to me during that deployment. He understood the information that he provided to me because that is the specific type of training that he went through and that is something that he did every day. There was no Soldier that was authorized to burn classified information onto a CD in the SCIF and take it to his room.

RECROSS-EXAMINATION

I thought PFC Manning was intelligent. After reading the memorandum by Master Sergeant Adkins I do now know that PFC Manning was suffering from gender identity disorder, but I did not know how it impacted him during the deployment. After reading the letters and seeing his conduct I do see how it impacted him during the deployment.

[The witness was permanently excused, duly warned, and withdrew from the courtroom.]

[The Article 32 hearing recessed at 1717, 17 December 2011.]

[The Article 32 hearing was called to order at 0942, 18 December 2011.]

The Investigating Officer called the Article 32 hearing to order, stating that all parties that were present prior to the hearing being recessed were once again present.

The Investigating Officer advised the defense and the persons observing that this is a formal investigation and in order to protect the dignity and decorum of these proceedings he asked that all that are present refrain from interrupting or otherwise disturbing the investigation. Should any person nevertheless engage in speech or conduct that interferes with

1 the dignity and decorum of the proceedings, they may be moved
2 from the court. Additionally, the rules of the hearing provide
3 that cell phones, blackberries, and similar devices are not
4 authorized in the hearing and any person with such device may be
5 removed from this courtroom.

6
7 **CAPTAIN CASEY FULTON, U.S. Army, was called as a witness for the**
8 **prosecution, was sworn, and testified in substance as follows:**

9
10 **DIRECT EXAMINATION**

11 **Questions by the trial counsel:**

12
13
14 I am assigned to 2nd Brigade, 10th Mountain Infantry
15 Division. At the time of the investigation, my name was Captain
16 Casey Martin. I am an officer in charge of a squadron
17 intelligence section. I am responsible for all of the collective
18 fusion of multi-intelligence disciplines, intelligence
19 surveillance and reconnaissance collection efforts and the
20 analytical evaluation of intelligence in order to answer
21 Commander's priority information requirements. That was a
22 description of what an all source intelligence officer does.
23

24 I have been an intelligence officer for six years this
25 coming January. I went to the officer basic course as a
26 lieutenant, and I had been to the military intelligence captain
27 career course. I was an assistant officer in charge of the
28 Battalion, I was a platoon leader in a military intelligence
29 Company, and I was a Brigade assistant officer in charge as well
30 as the S2 plans officer. I was the Brigade assistant S2. I was
31 deployed with PFC Manning for some of the deployment. I have
32 deployed twice as an intelligence officer, the first one was to
33 Afghanistan and the second one was to Iraq. I deployed to
34 Afghanistan from 2007 until 2008. I deployed to Iraq from 2009
35 until 2010.

36
37 I arrived at 2nd Brigade, 10th Mountain, in the middle of
38 September 2009. We deployed in October 2009. When I first
39 arrived at that unit my job was the S2 plans. I was responsible
40 for writing the intelligence section of the operation order, the
41 deployment operations order. That basically gave us all a task
42 and instructions that we needed to get into the country. The
43 first time that I met PFC Manning was when I asked the shop for
44 information regarding threat in Iraq and I was directed to PFC
45 Manning because he had a good understanding of the enemy threat.
46 I was directed to PFC Manning because I was told he had better
47 understanding of the threat than anyone else. I used information

1 to an extent to prepare the operations order. Prior to
2 deployment PFC Manning was an all source analyst. They do the
3 same thing that all source officers do but without the
4 managerial aspect, the responsibility is to gather intelligence
5 from all the different disciplines.

Generally to become an all source intelligence analyst they generally have to have a higher score on the ASVAB, and you have to hold a top secret clearance. To obtain a top secret clearance you have to be able to pass the background information, you have to be a United States citizen. 35F need to have top secret clearances because in order to fuse multi-intelligence disciplines some disciplines operate in the realms of top secret, so they have to be able to pull information from different types of classification levels. 35F for the operational security training is basically training that illustrates how the things that you do on a day-to-day basis may compromise current operations. Information security training...

OBJECTION

21 The defense objected to the line of questioning and asked
22 to voir dire the witness.

VOIR DIRE

I have never been an instructor at the AIT for the 35F. I have assisted in the training of those Soldiers at AIT.

29
30 The defense counsel objected to this witness testifying to
31 the actual training that 35F received in AIT.

32 The trial counsel requested the opportunity to ask
33 additional foundation questions for her to have an opinion as to
34 what they were taught.

37 The direct examination by the trial counsel continued as
38 follows:

It is likely that more than 10 Soldiers arrived to my units straight from AIT. They did not receive any training in between AIT and arrived to the first station.

OBJECTION

46 The defense counsel objected to the line of questioning
47 stating that he the trial counsel was leading the witness.

1 The Investigating Officer overruled the objection.
2
3

4 **The direct examination by the trial counsel continued as**
5 **follows:**

6 My understanding is that the only training that the
7 Soldiers get while in AIT is the only training that they have
8 before they come to the first duty station. Information security
9 training is training on the safeguarding of information,
10 classified or unclassified. Top secret is labeled top secret,
11 confidential as labeled confidential, secret is labeled secret;
12 etc.

13 If we had an unclassified document it will be marked on top
14 and the bottom of the document, it is generally green. The same
15 thing with confidential and secret documents, in a digital
16 environment things are marked the same way as well.

17 **OBJECTION**

18 The defense counsel objected to the line of questioning,
19 stating that the witness can speak about her experience but not
20 about the training that a Soldier has received.

21 The Investigating Officer overruled the defense's objection
22 stating that the trial counsel laid adequate foundation.

23 **The direct examination by the trial counsel continued as**
24 **follows:**

25 I have received and taught information security training.
26 It is taught that when Soldiers comes across a document that is
27 marked as classified that it needs to be safe guarded from
28 unauthorized disclosure. Once a document is marked classified
29 that is what it is. I did not have the authority to make a
30 document originally classified nor did any of the Soldiers. I
31 think that in order to make the decision whether document needs
32 to be classified we have to have the appointment from the
33 Secretary of the Army so only a Corps Commander or a Division
34 Commander has that authority.

35 The main system that the analysts have, have the ability to
36 chat with other analyst, it pulls data from databases, it
37 provides maps, and it has a link diagram program on it as well.
38 The primary database that the system pulls information from is

1 CIDNE, there are others but that is the one that majority of the
2 people use.

I'm not sure if CIDNE is just an intelligent based database, there are a lot of human intelligence reports, signal intelligence reports, significant activity reports are in there as well. The reports in CIDNE database should be marked top and bottom as to their classification. All of the significant activity reports are stored on the CIDNE database, IED, direct fire, indirect fire, assassinations, threats etc. DUSTWUN is when we have a US person get kidnapped, and that may have been on this CIDNE database. They're all types of information that could be on the CIDNE database that is of a sensitive and secret nature. CIDNE contains multiple types of reports on the database.

OBJECTION

19 The defense counsel objected to the line of questioning
20 stating the witness was speculating as to quite a few of the
21 questions that was asked.

The Investigating Officer instructed the trial counsel to elicit from the witness more definitive answers.

25
26 The direct examination by the trial counsel continued as
27 follows:

The CIDNE database contains information about the current position of US forces. Between December 2009 January 2010 CIDNE contained information about how units reacted to IEDs.

OBJECTION

34 The defense counsel objected to the line of questioning
35 stating relevance.

The trial counsel stated that multiple specifications on the charge sheet referred to this CIDNE database, and the trial counsel wanted the Investigating Officer to understand the vast amount of information that is in the database.

The defense counsel renewed his objection.

VOIR DIRE

1 The CIDNE database is huge. There are a lot of sources of
2 information on the database. Significant acts in the CIDNE
3 database is just a small part of the CIDNE database. Significant
4 activity reports should not have names inside of the reports.
5

6 The trial counsel stated that the specification on charge
7 sheet is for 380,000 records without limitation as to
8 significant activity, the entire CIDNE database.
9

10 The Investigating Officer overruled the defense's
11 objection.
12

13 **The direct examination by the trial counsel was continued as**
14 **follows:**
15

16 The CIDNE database contained a vast amount of information,
17 pertaining to enemy tactics, US Armed Forces responses to those
18 tactics, the different procedures that the United States Army
19 used to rescue their Soldiers that were kidnapped, under DUSTWUN
20 procedures, but I'm not too sure about the DUSTWUN procedures.
21

22 Intelink is a search engine, it could be found on the
23 SIPRNET which is a classified computer system that we use.
24 Intelink works like a search engine, if you're trying to find
25 information about a certain subject type the subject in and try
26 to find information on the subject that you typed in. Then the
27 information that will come back would be used in PowerPoint
28 slides were documents Excel spreadsheets and that is the type of
29 system that 35F would use on a weekly basis.
30

31 When I arrived in Iraq on my second tour I was the S2 plans
32 officer, basically it entailed me doing all of the analysis of
33 the enemy threat for future operations. The analysis contained
34 everything that we could find out about the enemy, and that 35F
35 junior enlisted Soldiers would assist me with that. We had
36 mission analysis and lengthy projects and we had very condensed
37 timelines, so it was not common for 35F to get different parts
38 of the project and then I will put it all together for one end
39 product, and then I would present it to the Commander. If we had
40 a situation that happened due to enemy contact, we would take
41 all of the information that we could gather on the enemy and
42 then we would put all that information on what they see on a map
43 in order to try to determine the enemy's approach and potential
44 cache locations in which the information presented to the
45 Commander.
46

1 Disruption zones are where the enemy would conduct the
2 tasks to disrupt the units on the ground but not necessarily try
3 to defeat them. An overlay is taken information and laying it on
4 top of each other so that you can see a pattern. A situational
5 template is the disposition of enemy forces in the operating
6 environment, with their location and where we think they are
7 operating. Cache locations are where they store their munitions.
8 That 35F would pull the significant activity from the CIDNE
9 database. In order to pull information from the system one would
10 have to know how to use the system.

11 I became the assistant Intel officer for the Brigade maybe
12 late January or early February. Our mission was to provide the
13 best threat picture to the Commander. Our focus was election
14 security at the time. The elections were in March 2010. Our day-
15 to-day operation consisted of us constantly updating the enemy
16 threat Intel assessment in order to maintain a good threat
17 picture and disrupt enemy operations.

18 My office was located in the SCIF. All of the all-source
19 Intel analyst work in the SCIF. My office was a room with
20 computers. The main section was open, there was an additional
21 room off to the side that nobody worked in, and the back room
22 had all the signal intelligence personnel. There were two
23 networks where PFC Manning and I worked at, the SIPR and the
24 NIPRNET workstations. Neither my team nor I had access to
25 systems that had a higher classification level than secret. We
26 had the ability to talk about it, to look at it, but we could
27 not directly access information higher than secret. The highest
28 level of information that I could access was secret information.

29 We had to burn CDs because we needed to share information
30 with the Iraqi's, so for that purpose we were also allowed to
31 burn CDs. While we deployed we often had discussions about
32 operational security and it was understood that you were not
33 supposed to do certain things that could compromise operational
34 security.

35 **OBJECTION**

36 The defense counsel objected to the line of questioning
37 stating that the witness was speculating.

38 The Investigating Officer sustained the objection.

39
40
41
42
43
44
45
46 **The direct examination by the trial counsel continued as**
47 **follows:**

1 The computers that that 35F access was on the shared
2 network, which was the SIPRNET and its classification was
3 secret. There weren't any restrictions for accessing the shared
4 network due to the nature of our jobs. The general rule was that
5 if you pulled information off the SIPRNET at work that he had a
6 secret classification and it was only done for operational
7 purposes. Once something is on a classified system, it is
8 assumed to be classified and you can't take it off of a
9 classified system and put it on unclassified system. That is
10 considered spillage. Something that you are prohibited from
11 doing is taking information off of a classified system and
12 putting it on a personal computer, the Soldiers that worked for
13 me knew this, because they signed a nondisclosure agreement.
14 That rule was not supervised all of the time due to the fact
15 that we had very few people that could supervise the Soldiers in
16 doing that so we relied on the Soldiers training.

PFC Manning was very good at compiling data. He was very good at importing and exporting Excel spreadsheets. PFC Manning did this type of work occasionally for me, and he was given understanding on what he was looking for in order to do this for me. PFC Manning was a part of the team that evaluated the violent extremist threat.

OBJECTION

The defense counsel objected to the line the question
stating that it led to speculation.

The Investigating Officer overruled the objection.

32 The direct examination by the trial counsel continued as
33 follows:
34

For the mission in Iraq PFC Manning did not need to be looking at the Guantánamo Bay SOP, or Iceland.

OBJECTION

40 The defense counsel renewed his objection to the line of
41 questioning.
42

The Investigating Officer noted his objection.

45 The direct examination by the trial counsel continued as
46 follows:
47

1 PFC Manning look for and pulled several things from the
2 SIPRNET that did not pertain to his job, or was not relevant for
3 him to perform his duties.

I am familiar with the Apache video which is commonly referred to as, "Collateral Murder." I became aware of it when one of the Soldiers in the office was looking at it on a workstation computer which is connected to the SIPRNET, which was before April 2010. I do know that that video have been released before PFC Manning was arrested, I had a conversation with him about this video around the April timeframe. I was speaking to all of the analysts and all of the section because I like to know what they think, and I asked him what he thought about that video that was released and PFC Manning stated that he thought it was the same video from the SIPRNET, and I disagreed with him. That was not the last time that I had any communication with PFC Manning about that video. Then he sent me an e-mail with two videos attached to it side-by-side one from our SIPRNET and the other one that was released. He sent the e-mail to me on SIPRNET, and the video that was released to WikiLeaks was also now on SIPRNET.

CROSS-EXAMINATION

26 Questions by the civilian defense counsel:

I became a part of 2nd Brigade in September 2009, and my duty position at that time was the assistant S2, and we deployed to Iraq in November 2009. When we arrived in Iraq I was the S2 plans officer. And during that time my focus was on election security. I did not have any Soldiers working directly for me as the S2 plans officer. One of the Soldiers helped me with these important projects was PFC Manning. I saw computer skills as a strength and I use those strength as a part of my work as to plan projects. When he was assigned project he completed the project in a timely fashion. From November 2009 until March 2010 that was the bulk of the work that I was doing. PFC Manning would also engage with me on other topics because he was interested in topics that we discussed. Sometimes he would find information for me based upon the things that we talked about. Even though PFC Manning did a very good word for me I did not believe that he was a very good analyst. But that is not surprising because all Intel on this need to grow in the job of being an analyst is not an easy one. Because PFC Manning was still a junior analysts I never asked him to do any analytical work I just asked him to collect the data. My way of training

1 PFC Manning would be to explain to him after the project was
2 completed the reason why needed the data for him to collect for
3 me. They would go to analyst in the entire shop, Staff Sergeant
4 Balonek that was because he was the most experienced. I have
5 seen Soldiers listening to music in the T-SCIF, because it was
6 on the shared network, the SIPRNET. And it was common for them
7 to transfer music from the SIPRNET to another network, but that
8 was not an acceptable process. No one ever told me that music on
9 the SIPRNET was a violation of the information assurance
10 security procedures.
11

12 Soldiers would watch movies and play computer games on
13 their computer workstations, and these were movies that they
14 would pull from the shared drive. The machines that we worked on
15 did not have MIRC chat on it but I believe it to be mission
16 essential. And I also believe that Google Earth was mission
17 essential as well. I'll use Google Earth to do analysis on
18 terrain. Master Sergeant Adkins was speaking to PFC Manning
19 within the SCIF but off to the side, and the conference room.
20 When I went in there I seen PFC Manning was upset sitting on the
21 floor and Master Sergeant Adkins was talking to him, he was
22 sitting on the floor with his hands wrapped around his knees,
23 kind of like curled up in a ball. I did not speak but Master
24 Sergeant Adkins later on that day to find out what was going on.
25 I brought Specialist Showman in later on that night because I
26 needed her to find a certain product. No one else in the SCIF
27 could find that product, I had someone go and wake her up, she
28 was not happy about being woken up and having to come back and
29 work.
30

31 At the time of the incident I had my back to both PFC
32 Manning and Specialist Showman, because I was on the phone.
33 Specialist Showman was upset with PFC Manning due to the fact
34 that he was playing a game on the computer, and I overheard PFC
35 Manning say, "You need to calm down because Captain Martin was
36 the one who brought you back in here." Then I heard curse words
37 and some shuffling then I turned around, and I saw Specialist
38 Showman with PFC Manning pinned on the ground. Later, after
39 everything calmed down Specialist Showman stated that PFC
40 Manning struck her in the face. Then I spoke to Master Sergeant
41 Adkins and told him that PFC Manning needed to be moved from the
42 SCIF, and that his weapon needed to be taken from him, and that
43 he needed to go to behavioral health. I viewed this as a
44 standard response of any Soldier that shows violence towards
45 another Soldier. I also felt that PFC Manning needed to have
46 derogatory information put into his file, which could have
47 resulted in him having his security clearance suspended and

1 ultimately revoked. Basically the derogatory information
2 process as a way of tracking Soldiers with security clearances.
3 Since Master Sergeant Adkins was the SSR it was his duty to
4 report that information. I was aware of a previous incident
5 between PFC Manning and Specialist Padgett, it occurred early in
6 the deployment. I believe that derogatory information incident
7 should've been filed on that incident as well. S6 has the power
8 to suspend access to classified information for Soldiers who
9 have derogatory information in their files.

OBJECTION

The trial counsel objected to this line of questioning stating relevance.

The defense counsel stated that he was asking the witness to tell the Investigating Officer about the derogatory information process and how quickly it could be implemented.

Investigating Officer stated that he made a ruling as to the relevance of this line the question earlier before the defense counsel to keep his questions brief.

The cross-examination by the defense counsel continue as follows:

Once the Soldier clearance is suspended by the Commander they do not have access to classified information.

BEDIBECT EXAMINATION

Questions by the trial counsel:

After the incident between PFC Manning and Specialist Showman I recommended that he be removed from the SCIF, and he was removed from the SCIF which happened while Captain Lim was on leave. I was not a part of any punitive measures so I'm not sure what happened to PFC Manning for that incident. The proper handling of classified information is a fundamental principle that all Soldiers, regardless whether or not they are 3SF, should know.

BECROSS-EXAMINATION

Questions by the civilian defense counsel:

Having a security clearance is not a right, it is a privilege whether you are able to keep your security clearance depends upon your actions. If you have adverse action you will lose your security clearance.

[The witness was permanently excused, duly warned, and withdrew from the courtroom.]

[The Article 32 hearing recessed at 1103, 18 December 2011.]

[The Article 32 hearing was called to order at 1120, 18 December 2011.]

15 Investigating Officer called the hearing to order, and
16 stated that all parties that were present prior to the recess
17 were again present.

SERGEANT FIRST CLASS PAUL ADKINS, U.S. Army, was called as a witness for the prosecution, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

25 Questions by Assistant Trial Counsel 2:

27 The witness stated that on the advice of his counsel he
28 invoked his Article 31 rights.

30 The defense counsel stated the witness invoking his Article
31 rights is an improper basis at this point.

33 The trial counsel stated that the Convening Authority did
34 not intend on granting the witness testimonial immunity.

36 The Investigating Officer stated that since the witness
37 invoked his Article 31 rights he is unavailable for questioning.

39 WARRANT OFFICER ONE KYLE BALONEK, U.S. Army, was called
40 telephonically as a witness for the prosecution, was sworn, and
41 testified in substance as follows:

DIRECT EXAMINATION

45 Questions by Assistant Trial Counsel 2:

1 The witness stated that on the advice of his counsel he
2 invoked his Article 31 rights.

The defense counsel stated the witness invoking his Article 31 rights is an improper basis at this point.

The trial counsel stated that the Convening Authority did not intend on granting the witness testimonial immunity.

10 The Investigating Officer stated that since the witness
11 invoked his Article 31 rights he is unavailable for questioning.

13 SERGEANT CHAD MADARAS, U.S. Army, was called telephonically as a
14 witness for the prosecution, was sworn, and testified as
15 follows:

DIRECT EXAMINATION

Questions by Assistant Trial Counsel 2:

I am assigned to 2/10 Mountain in Fort Drum, New York. I met PFC Manning at Fort Drum and I worked with him on one JRTC rotation and then I worked with him in Iraq. I met him in either the summer or fall of 2008. I am a 3SF, intelligence analyst, PFC Manning has the same MOS as me. I attended AIT at Fort Huachuca, Arizona. We learned how to read military signals on a map, how to read a map, do PowerPoint presentations, and we learned about classified information as well. I arrived at this unit in November 2007. PFC Manning and I attended several classes in the summer of 2008. At JRTC they just push down information we analyzed and performed our jobs in an environment that was simulated to what it would be like in Iraq. At JRTC we both were different shifts. Then I deployed with PFC Manning, I went in October of 2009 and he showed up a few weeks later. I worked in the Brigade SCIF at FOB Hammer. PFC Manning worked at the same place. I was a Shia team analyst and so was PFC Manning, but we worked different shifts; he worked the night shift and I worked the day shift. We shared a workstation, we shared computers as well. We supported Mr. Balonek in finding any information that he had on Shia targets in our area. Typically, we would just read reports and try to link together any targets that might be operating together. The majority of the tasks that we did not complete on the daytime were left for the night shift. PFC Manning often did not complete the tasks that were left for him. We used Intelink, ArcMap, and CIDNE Iraq to do our job. Never searched for WikiLeaks, Iceland, Julian Assange, retention, Birgitta Jonsdottir, or Rekyavik.

Sometimes we would use Intellipedia, to search for groups and names and find out if there is any more information on a group, terrorist groups. I never use PFC Manning's user profile for anything. I didn't know any of his passwords either. My computer operated out of the ordinary all of the time, and whenever that happened I would have Mr. Milliman get it up and running again for me.

GROSS-EXAMINATION

Questions by the civilian defense counsel:

I first met PFC Manning in 2008, from what I remember of him he was interested in US politics. At JRTC, if the computer wasn't working PFC Manning would be the one to try and fix it. I'm not really a computer guy, so I don't know much about computers other than the basic operating systems.

The training that PFC Manning and I had at Ft. Drum did not instruct us as to what we could and could not put on the computer. I was a part of the advanced party for Bravo Company, I left Fort Drum in October 2009 and I arrived at FOB Hammer around 15 October 2009. During deployment I worked at the SCIF, I worked as part of the Shia group, as did PFC Manning. I worked day shift and PFC Manning worked the night shift, there was no NCO supervisor during the night shift. The night shift was tasked with finishing up the work that the day shift was unable to complete. I do not know if during a deployment PFC Manning was suffering from any issues. I saw a couple of emotional outbursts that PFC Manning had during the deployment. Sometime around December 2009 January 2010 Master Sergeant Adkins had asked PFC Manning to remove a curtain that was covering up a map I stood up to go and do it Master Sergeant Adkins told me that he instructed PFC Manning to do it then PFC Manning stood up slammed his chair on the ground and that is when Master Sergeant Adkins took PFC Manning outside and tried to calm him down. To the best of my knowledge no disciplinary action happened to PFC Manning because of the incident. To my knowledge out of all of the incidents that PFC Manning had while in Iraq no formal punishment was done on him.

OBJECTION

Assistant Trial Counsel 2 objected to this line of questioning stating the Investigating Officer already made a ruling on this type of questioning.

1 The defense counsel stated that his line of questioning
2 goes to what the witness actually saw happen in the SCIF.

The Investigating Officer instructed the defense counsel to limit his questions to only what the witness saw.

8 The cross-examination by the defense counsel continued as
9 follows:

11 Based upon PFC Manning's actions from what I've seen I did
12 not believe that he would cause harm to himself or others. I do
13 not think that PFC Manning had friends within the unit.

The Investigating Officer informed the defense counsel that his line of questioning seemed attenuated.

The defense counsel stated that according to RCM 405 he was allowed to perform discovery and given latitude to cross-examine witnesses.

The cross-examination by the defense counsel continued as follows:

24 My personal knowledge is that it seemed as if PFC Manning
25 was an outcast within the unit, because he kind of separated
26 himself from other people in the unit. I do not recall any
27 training being done on SCIF rules and regulations. I did see
28 some Soldiers display movies, listen to music, and play games on
29 their workstations in the SCIF. One of the reasons why the
30 computers that PFC Manning and I worked on crashed could be
31 because there was too much stuff saved on the desktop. MIRC
32 Chat was on our computers; it allowed us to communicate with
33 other units. It was added to our computers only after we got to
34 Iraq. I don't know how someone would add a program to the
35 computer only because I do not know a lot about computers.

BEDIRECT EXAMINATION

39
40 Questions by Assistant Trial Counsel 2:

REC Mapping and I both have the same MOS

OBJECTION

45 The defense counsel objected to that line of questioning.
46
47 stating Assistant Trial Counsel 2 was leading the witness.

1 The Investigating Officer overruled the objection.
2
3

4 **The redirect examination by Assistant Trial Counsel 2 continues**
5 **as follows:**
6

7 PFC Manning and I both signed nondisclosure agreements.
8

9 [The witness was permanently excused, duly warned, and
10 withdrew from the courtroom.]
11

12 [The Article 32 hearing recessed at 1157, 18 December
13 2011.]
14

15 [The Article 32 hearing was called to order at 1336, 18
16 December 2011.]
17

18 The Investigating Officer called the hearing to order and
19 stated that all parties that were present prior to the recess
20 are once again present.
21

22 The Investigating Officer advised the participants and
23 persons observing that this is a formal investigation. In order
24 to protect the dignity and decorum of these proceedings I would
25 ask that all present refrain from interrupting or otherwise
26 disturbing the investigation. Should any person nevertheless
27 engage in speech or conduct that interferes with the dignity and
28 decorum of the proceedings, they may be removed from this court.
29 Additionally, the rules of the hearing provided cell phones,
30 blackberries, and similar devices are not authorized in the
31 hearing and any person with such device may be removed from this
32 courtroom.
33

34 **JASON MILLIMAN, Civilian, was called telephonically as a witness**
35 **for the prosecution, was sworn, and testified in substance as**
36 **follows:**
37

DIRECT EXAMINATION

38 **Questions by the trial counsel:**
39

40 I am currently a network engineer working with Task
41 Incorporated. I served in the military for twenty-one years.
42 Two years and seventeen days as the 72E, a combat
43 telecommunications center operator and 33T is an electronics
44 repair guy. The electronics repair technician is responsible
45
46

1 for repairing electronics for military intelligence. We
2 repaired all of their electronic equipment.
3

4 At that time that job you had to have a top secret
5 clearance, but now I believe they only have to have a secret
6 clearance right. I retired from the Army 31 August 2005, then I
7 took a job working for General Dynamics, after that I took a job
8 at Sparta, and after Sparta I worked for C2S2. I was deployed
9 from November 2007 until December 2010. While I was deployed in
10 Iraq I was stationed at several different bases. I was at FOB
11 Hammer for about a year from July 2009 until July 2010, but I'm
12 not positive. While I was there I was a field software
13 engineer, I worked seven days a week. I was there the entire
14 time 2nd Brigade, 10th Mountain Division was deployed to Iraq.
15 DCGS - A, which stands for distributed common ground systems or
16 station I can't remember which one. It was the system in which
17 the analysts use to keep databases on so they can obtain
18 information about threats in the area and it was my job to
19 ensure that the system stayed up or never broke down. Basically
20 there were only two people that were able to perform system
21 maintenance on the laptops if anything happened, those two
22 people were me and what they called a mentor.
23

24 Typically I would have to work on one computer a day, and
25 that is in approximation. Corrupted PST and other information
26 happen quite often with people who are afraid to delete anything
27 off of the computer. Depending upon the nature of the problem,
28 if it was a fairly simple problem the mentor could handle it or
29 if the computer would not boot up or anything then I would have
30 to take the computer to my office to work on it and fix it. If
31 a computer could not be fixed and I would take the hard drive
32 out and I would replace it with another hard drive that was
33 working and get the computer back to the Soldier. I know
34 Private First Class Manning is one because he was one of the
35 analysts in the SCIF where I worked. I did not interact with
36 PFC Manning every day I saw him every day but majority of the
37 time I would interact with PFC Manning is if he had a problem
38 with his machine. I saw Sergeant Madaras more than I seen PFC
39 Manning due to the fact that he worked on dayshift. Their
40 computer seemed to be the one that had the most issues, when I
41 asked them about it neither of them knew what was wrong with the
42 computer and PFC Manning said he didn't touch the computer to
43 try to fix it. The other interactions that I had with PFC
44 Manning would be that we may sit at the same table at chow not
45 very often. I really didn't have that much communication with
46 PFC Manning. I really don't know too much about PFC Manning's
47 skills on working' on the computer.

OBJECTION

Defense objected to this line of questioning stating speculation.

The trial counsel stated that he will withdraw the question.

The direct examination by trial counsel continued as follows:

PFC Manning made known on the first day he used to have a computer repair business of his own, which would've further he has some sort of knowledge more than the average user. PFC Manning has made the statement that "if people knew what I could do with the computer they would be amazed," I just chalked it up to him bragging.

I know of the program WGet, but I never used it myself. I was the only one authorized to install programs on those computers, well also and some limited cases the mentors. I'm not sure if Wget was an authorized program on that system. I did not recall installing a program on the system.

MIRC chat was given the authorization to be installed on those systems due to the fact that majority of the units use it to communicate with one another. Soldiers could install that software to the desktop, they were not supposed to but they could have done it if they wanted to.

CROSS-EXAMINATION

Questions by the civilian defense counsel:

I retired in 2005. At the time that I retired I was an E7. Eventually I got a job as the field software engineer, which job I did from November 2007 until December 2010. I was not the only field software engineer in Iraq there were others that were out there that could lend a helping hand if I needed. Heat was a major problem for those systems. They would run hot even in an air-conditioned room. Prior to me having Soldiers place Gatorade caps underneath their systems so air could get to them they would crash quite often. I did not only work on them when they crashed but with a lot of problems I had to work on. But when they did crash they had to be repaired by me.

1 There were a lot of profiles on those machines for various
2 reasons. If there was a lot of stuff saved on the desktop it
3 would have a problem logging onto their profile so we would have
4 to delete their profile and create a new one sometimes that
5 fixed the problem. Those systems crash for numerous reasons.
6 Sometimes when those systems crash you will be able to recover
7 the information of the hard drive and then sometimes you would
8 not be able to become information. One of the ways that would
9 be able to recover the information of the hard drive after it
10 had crash would be by using a universal driver, which would
11 allow me to connect to the hard drive as if it was a external
12 hard drive, then I would be able to get the information off the
13 hard drive the same way you would get information off a thumb
14 drive. If Soldiers wanted software added to the system they
15 will come and asked me to add that program to their system since
16 I was basically the only one who had administrative rights to
17 add programs to that system. I was asked to install the
18 software that would allow the Soldiers to shrink the file so
19 that it could be sent over e-mail.

20
21 There was a series of channels that was required to be gone
22 through in order to install software on their system that was
23 not already approved and get. We took a couple of days to get
24 the software approved. I don't know if anybody who approved the
25 installation of the software was in the military. I was asked
26 to install MIRC chat, it is very similar to instant messenger it
27 was not part of the original baseline program. I did request to
28 have software programs installed on the system that were denied
29 that was initially, I don't recall what the name of the program
30 was. The determining factor for adding a software program to
31 the system was whether or not it worked well with the other
32 programs that were already on the system. Sometimes software
33 programs would be installed on the system without me knowing it,
34 but it was not a common occurrence. I did not recall seeing
35 WGET on those systems.

BEDIBECT EXAMINATION

38 Questions by the trial counsel:

40
41 A self executable program could be run from a CD and not
42 from the desktop. I was never asked by PFC Manning to install
43 WGET onto his machine.

EXAMINATION BY THE ARTICLE 32 HEARING

47 Questions by the Investigating Officer:

A "mentor" is a subject matter expert on intricacies usually of a program called ARC GIS, this one program is so complicated you can get a masters degree in this program alone. It takes a long time to become an expert in that program and they would help Soldiers use it.

[The witness was permanently excused, duly warned, and withdrew from the courtroom.]

[The Article 32 hearing recessed at 1417, 18 December 2011.]

[The Article 32 hearing was called to order at 1428, 18 December 2011.]

All parties that were present prior to the recess are again present.

CAPTAIN THOMAS CHEREPKO, U.S. Army, was called telephonically as a witness for the prosecution, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

I am currently assigned to US forces NATO; I'm the deputy CIS officer for Force Command Madrid. A CIS officer is a computer and information systems officer, my duty here is to assist the CIS officer in planning and executing for training exercises and contingency operations for multinational NATO forces. My branch in the Army is a functional area 53, an Information Systems Manager. There are several different jobs that we can hold so it depends on what your duty description is at the current position you're working.

I have been in the Army for 16 years; I have been and automations officer since 2009. Prior to this MOS I was an engineering officer. I did that for approximately 4 years. Before becoming an officer I was a 19K that is an armored crewman. The training that I received was I went through the function area fifty-three overview training at Fort Gordon Georgia, the information systems manager course. That course is broken down into three phases the first phase is basically networking the second phase is server systems, and the third phase is information security.

1 My first assignment upon graduation was with 2nd Brigade,
2 10th Mountain, as the Brigade automation officer, and my
3 subsequent assignment is here at NATO as the deputy CIS officer.
4 I have deployed before to Iraq three times, in 2005, 2006 until
5 2008, and then again from 2009 until 2010. On my last
6 deployment I was stationed on FOB Hammer, Iraq. I first arrived
7 at that Brigade on October 1, 2009. We arrived at FOB Hammer
8 after the bulk of the main body had arrived, a few days after
9 TOA had occurred. While I was deployed I was the Brigade
10 automation officer, I was responsible for the NIPR and SIPRNET.
11 The NIPRNET is used strictly for unclassified information, while
12 on the NIPRNET you can surf the Internet basically the same
13 websites that you could go on at home you could go on using the
14 NIPRNET but with some restrictions, you're not supposed put
15 classified information on the NIPRNET. The SIPRNET is a global
16 intra-net for the Department of Defense, it is a closed network
17 that is classified up to secret. In order to have a separate
18 account you had to have a secret classification, completed the
19 required training, and shown a need that you needed to have
20 access to the SIPRNET for operational purposes. An AUP is an
21 acceptable use policy, it is a document that you review and sign
22 and it tells you what you can and cannot do on the network. I
23 don't remember if there's anything specific on classified
24 information while I was taking the information assurance
25 training online, it is just centered on all information security
26 within the government work area.

27
28 Several of my Soldiers and I were the administrators for
29 the SIPRNET. A network administrator monitors, maintains, and
30 ensures that there is communication twenty-four hours a day.
31 The system administrators were the only ones that were
32 authorized to install software programs on SIPRNET. I have
33 heard of the program WGET, that program was not authorized to be
34 installed on SIPRNET.

35
36 I am familiar with MIRC chat. It is a program that allows
37 you to communicate with a different end terminal, similar to
38 instant messenger. There was an operational need to use MIRC
39 chat, without it we would not have been able to communicate with
40 the aviation community. To my knowledge I do believe it was
41 authorized on the system. There is a requirement in the Army
42 regulation for everyone who uses the system to sign an AUP.
43 Private First Class Manning was already in theater when I
44 arrived in Iraq. I could not find PFC Manning's AUP when we
45 were asked to produce it. We were unable to find a few others
46 as well to include mine.

1 Basically, an "AUP" tells you what you are and are not
2 permitted to do on the network, and that the ultimate
3 responsibility of enforcing these rules falls upon the user. A
4 shared drive is much larger than a thumb drive that you have at
5 home, it is a server and is assessable to everyone on the
6 network connected by an IP address to the main server of the
7 network and uses it to connect to that drive and use it as a
8 hard drive for their work as well. Everyone referred to that
9 drive as the T drive, the classification of the drive was
10 secret. The drive has been passed down from unit to unit for
11 the past several years, there were movies, music, and games on
12 that drive as well. There was no technical restriction to
13 prevent a Soldier from burning a CD of information that came
14 from the SIPRNET, there was no requirement and there was no need
15 to. There was nothing to prevent a Soldier from burning a CD
16 with classified information on it and taking it to his CHU.

CROSS-EXAMINATION

21 Questions by the civilian defense counsel:

I worked as the automation officer from my arrival in 2009 until I PCS'd just last summer. The job of the Brigade automation officer entailed this to establish manage maintain and secure the Brigade's digital communications. My day will begin by most people on the staff, I would check to ensure all the backups have been installed, I would check my e-mails, then I will proceed to check with the Soldiers at the help desk to see what the major problems were, and then the rest of my day consisted of troubleshooting networks and doing everything that I could to keep the network operational. The functional area 53 course overall focuses on the technical aspects of running the server running the network the course of the to give a fairly good, it is the civilian Cisco Academy, the civilian Microsoft Academy, that we attend for the courses it prepared us about as well as you could in a nine-month course. The course is sort of like any basic course, they train you on the most common aspects of the job.

40
41 I could have possibly given a sworn statement on January 6,
42 2011. I don't recall everything that I said in my sworn
43 statement. I do not have my sworn statement or any notes
44 available to me because that is what I was instructed to do.
45 The course that we went to did not teach us the way the way the
46 Army does things. I arrived at FOB Hammer I believe it was the
47 middle of November 2009. I arrived after RIP TQA. Immediately

1 after I graduated from the course I worked as the Brigade
2 automations officer. When I got to the Brigade and Iraq I was
3 officially assigned the information assurance manager job I have
4 orders assigned to that job, I didn't have the official orders
5 until after I got in and got settled in that job.

7 I was the person in charge of ensuring the information
8 assurance practices were in place and that training was being
9 done as required. I did not conduct any additional training
10 that was required for the Brigade as a whole but for the
11 Soldiers that work for me I did conduct additional training for
12 information assurance. I coordinated through Brigade and II
13 Corps to have a team come in and assist the security of the
14 system that we were working on at FOB Hammer. Personally I
15 believed that we would be fine, but I was told that the tactical
16 network at 2nd Brigade was not accredited.

18 A "DIACAP package" is the collection of documents that are
19 submitted through Division to Netcom that would verify that the
20 systems and network is for software all whatever piece of
21 equipment that you are attempting to accredit meets the DOD
22 requirements for security and is therefore accredited through
23 the accreditation process. I did not complete a DIACAP package
24 I had not been trained in the preparation of a DIACAP package
25 either.

In March 2011, I received a letter of admonishment in that letter was for failing to ensure that the Brigade network was properly accredited. I would occasionally go to the TSCIF to do some troubleshooting and to pick up other officers to go to lunch.

OBJECTION

35 The trial counsel objected to the line the questioning
36 stating the defense had not laid a proper foundation.

The defense counsel responded by saying he was asking information assurance questions of the witness.

Investigating Officer overruled the trial counsel's objection.

44 The cross-examination by the civilian defense counsel continued
45 as follows:

1 I did not receive any DAIG-IA inspections while I was
2 downrange, and I do not know why. DAIG-IA stands for the
3 Department of the Army Inspector General inspection, the Brigade
4 went through one well after we deployed. I never inspected the
5 SCIF. I did view inspecting the TSCIF as a part of my job. I'm
6 not sure if the TSCIF was inspected but I think that it was. I
7 do not know the TSCIF conduct itself inspections. I do not know
8 if there was the information assurance officer that was
9 specifically assigned to the TSCIF while we were deployed. I do
10 not know what the special security representative is so I am not
11 sure if the TSCIF had one.
12

13 I did know that there was music on the T drive, there was
14 not one central location for where the music was stored. Music
15 was not authorized on the T drive, and whenever I saw music I
16 would take it off. I'm not sure if anyone was punished by
17 having music on the T drive, I made a recommendation as to
18 keeping music off of the T drive but other than that, that was
19 about as far as it go. Movies, music, games, were not
20 authorized to be on T drive and as a matter of fact it
21 specifically violated the AUP agreement. I alerted my chain of
22 command of all the unauthorized programs on the network and I
23 requested that they put a stop to it. I'm not sure what actions
24 came out of it but I do know that it stop once we disconnected
25 the drive when reading when we redeployed to come back home. I
26 cannot say for sure whether or not 2nd Brigade was undisciplined
27 in their enforcement of information assurance, because I have
28 nothing else to compare it to.
29

30 Depending upon what type of program they wanted to install
31 there were different ways that they could go about doing it.
32 They will program the ticket at without going through an
33 administrator and in other programs they had to go to an
34 administrator to add that program. There was no memorandum that
35 stated will not put executable files on your system, besides the
36 AUP and the information assurance training that everyone
37 received.
38

39 If I would've found something light on authorized software
40 that was on if Soldiers computer the first thing that I would do
41 would be to notify their supervisor and inform them of what I
42 found informed him of the repercussions of what I found could be
43 and then I would leave it up to the first line supervisor to
44 determine what to do from there. This supervisor told me that
45 it was a mission essential program then I will have to call up
46 higher to get approval to have the software left on the
47 computer. I am not all that sure about how the process worked

1 to get unauthorized software left the computer I would have to
2 look it up, but offhand I cannot tell you that right now is not
3 a quick process. More likely it would not have gotten approved
4 during a deployment. I have seen programs that are run as
5 executables from the desktop, I was given the CD from CID that
6 was an executable file, but I'm not sure whether or not it was
7 an authorized program.

8
9 If I was actively looking for an executable file on the
10 shared drive it would not be hard for me to locate that file. I
11 do know what a DEROG report is, and if the form is filed the S6
12 will be responsible for suspending that access to SIPRNET, and
13 it can be done in less than a minute. I tried to get rid of the
14 login accounts because it is just good practice to have
15 someone's name associated with account instead of just their
16 duty position. With role-based accounts I never really knew who
17 was actually using that account. Whenever the computer is
18 reimaged, all the user profiles that were on the computers and
19 then my Soldiers would have to go in and create a new user file
20 underneath their profile to ensure that the computer was
21 reimaged properly.

22
23 I was notified of PFC Manning's arrest the night that it
24 occurred. I do not know the exact day I just know that it was
25 the end of May 2010, by Captain Lim. I spoke to several CID
26 agents about PFC Manning's arrest. They were asking me about
27 these server logs that would show activity on the network and
28 activity on shared drive and e-mail logs that would show
29 activity on e-mails. I was able to pull some of them up but we
30 did not maintain all of them, we only had a limited amount of
31 space so we only focused on the ones that pertain to fixing a
32 computer. CID did ask me to make an image of the computer, they
33 asked him to do that the same night they showed up to our camp
34 to arrest PFC Manning.

35
36 One of the Soldiers created that image I'm not sure which
37 one but I know it was one of my Soldiers who created it. I
38 don't recall exactly which one they asked me to make the image
39 for but I believe it was for the supply Sergeant's computer. I
40 was concerned about making a forensic image due to the fact that
41 I assisted in an investigation prior to this one and I just
42 wanted to ensure that whatever I did would not taint the data
43 collected in any way. In response to that the CID agents told
44 me that the computer has not been seized yet so there is no need
45 for you to worry about messing up the computer and it has been
46 so long since the incident has happened it is probably already
47 corrupted. I was asked to make a copy of PFC Manning folder and

1 log files from the server after the arrest of PFC Manning. I
2 spoke with the agent from CCIU who walked me through the process
3 of how to make a copy that maintains the metadata, and that is
4 when the CID agent sent me the executable program.
5

6 **REDIRECT EXAMINATION**
7

8 **OBJECTION**
9

10 The defense counsel objected to the trial counsel line of
11 questioning stating that he was leading the witness.
12

13 The Investigating Officer overruled the objection.
14

15 **The redirect examination by the trial counsel continued as**
16 **follows:**
17

18 I am not entirely sure what the log data contained.
19

20 **OBJECTION**
21

22 The defense counsel objected to the trial counsel's
23 questioning stating relevance.
24

25 The Investigating Officer overruled the objection.
26

27 **The redirect examination by the trial counsel continued as**
28 **follows:**
29

30 Nothing happened to my system per se, but a week or two
31 later the Brigade executive officer had a meeting with the staff
32 to figure out what we can do to prevent this from happening
33 again.
34

35 **OBJECTION**
36

37 The defense counsel objected to the trial counsel's
38 questioning stating that it was argumentative.
39

40 The trial counsel stated that the defense asked the same
41 question to the witness during cross-examination.
42

43 The Investigating Officer overruled the defense counsels
44 objection.
45

46 **The redirect examination by the trial counsel continued as**
47 **follows:**

To my knowledge I do not believe any Soldier had disciplinary action taken against them for violation of the information assurance rules.

BECROSS-EXAMINATION

Questions by the civilian defense counsel:

During our meeting with the Brigade executive officer we put together a sort of corrective training for the derogatory report process, basically that was designed to reemphasize to leaders that they needed to follow the proper procedures when DEROGING Soldiers.

[The witness was permanently excused, duly warned, and ended the phone call.]

[The Article 32 hearing recessed at 1538, 18 December
2011.]

[The Article 32 hearing was called to order at 1551, 18 December 2011.]

The Investigating Officer called the hearing to order and stated that all parties that were present prior to the recess were once again present.

The trial counsel requested that the Investigating Officer close the hearing to determine if any classified information in this case should be heard in a closed session.

The Investigating Officer closed the hearing to determine if any classified information in this case should be heard.

[The Article 32 hearing closed at 1553, 18 December 2011.]

[The Article 32 hearing opened at 1745, 18 December 2011.]

Investigating Officer called the hearing to order reflected on the record that the hearing is now open. All parties that were present prior to the hearing being closed are now again present.

The Investigating Officer stated that during the closed hearing he made the determination that classified evidence was properly classified and that protecting classified information

1 is an overriding interest that outweighs the value of an open
2 proceeding and considered other methods of protecting classified
3 information and determined that no other means other than
4 closure can protect an overriding interest. There will be a
5 closed hearing tomorrow morning no earlier than 10 AM.

The defense objected to the closed hearing.

SPECIAL AGENT DAVID SHAVER, Civilian, was called as a witness
for the prosecution, was sworn, and testified in substance as
follows:

DIRECT EXAMINATION

15 Questions by assistant trial counsel 1:

I work for the Army Computer Crimes Investigative Unit. I began working for them in 1999, at the time I was in the military as a CID agent and an investigator. I am in a supervisory position now, I am the Special Agent in charge of the digital forensics and research branch. Our job is to conduct examinations of digital media in support of CCIU cases. The primary mission is to investigate any intrusion into any Army computer worldwide, however we are tasked to do other stuff.

I have received training from several locations. The first would be the Law Enforcement Training Center, in Glencoe, Georgia; the Defense Cyber Crime Center in Maryland, and I have been trained on various commercial products as well. Products such as a forensic product called ENCASE, which is a computer forensic program that allows you to examine digital media. I received training on Windows, Unix, Linux, and Macintosh. I hold several certifications; I am a certified computer crime investigator, an ENCASE certified examiner, A+ and net plus. The A+ certification is a hardware-based certification. Net Plus is a network-based certification. I have published articles related to the field of computer forensics. I co-authored a chapter on Windows forensics in the handbook of digital forensics investigations. I have given several scholarly presentations. A virtual machine is where we developed a process to take a forensic image and turn it into a virtual machine on your host computer. By using a virtual machine you can gain the perspective of examining the computer as a subject has used it.

1 I was notified of this case in late May of 2010, I examined
2 pieces of media related to this case. The first things I
3 examined were two SIPR computers. They were his primary and
4 secondary computers. An IP is an Internet protocol address,
5 which is a set of numbers that are unique to each computer. I
6 am familiar with Intelink, Intelink is Google of the SIPRNET. I
7 examined Intelink logs, those log files ranged from October 2009
8 until May 2010. From the logs I was able to obtain the majority
9 of the activity that happened on the computer. I identified
10 some kind of query and then I ran a search against log files for
11 that query, after that I verified it as well. I put them into
12 an Excel spreadsheet for ease of review. I noticed that there
13 were a lot of searches that seemed out of place, the keyword
14 searches that he was using seemed out of place for his job.
15

16 [The trial counsel published screenshot documents for the
17 witness to view on a monitor.]
18

19 That is a screenshot of the Excel spreadsheet that I
20 created called keywords. It is a filtered spreadsheet of the
21 keyword searches for WikiLeaks. From November 2009 through May
22 2010, I found over one hundred searches for WikiLeaks under PFC
23 Manning's profile. This is a different screenshot from that
24 same Excel spreadsheet; this time we filtered on the keyword
25 Iceland. The first search for Iceland was 9 January 2010, it is
26 only filtered on the keyword Iceland and this came from PFC
27 Manning's profile. This is another screenshot from the same
28 Excel spreadsheet; this time I filtered on the keyword
29 retention, and it was searching for the retention of
30 interrogation videos. That search was done 28 November 2009,
31 that was the first time that he searched for it.
32

33 The Intelink program also captured the use of a WGET
34 program to download a large number of files. WGET is a command
35 line utility to download files from a Web server. Command line
36 means it is non graphical, meaning that you have to open up a
37 command prompt and then you are able to type the commands, it is
38 like a DOS program. WGET is not a standard program on an Army
39 computer. As part of my job to investigate intrusions, I get a
40 list of authorized software and WGET is not on that list. The
41 first time that I saw PFC Manning access WGET was March of 2010.
42 This is another portion of the screenshot of the Excel
43 spreadsheet that I created for Intelink. This portion is
44 filtered on the word WGET. The server in question was a
45 SharePoint server, so it stores files by ID number, it is a
46 database. The numbers beside the file ID number represent the
47 action that was taken for the searches, if a document was

1 downloaded, if the search came back, file not found, things of
2 that nature. There were over seven hundred examples of the
3 computer using WGET commands for the month of March pertaining
4 to JTF Guantánamo Bay detainee suspects. I know this because I
5 downloaded the same documents using the same program, and I used
6 the same path. And I know that they were the same documents
7 that were on the WikiLeaks website because I compared the two.
8

9 When we conduct a forensic examination, the first thing we
10 do is we verify the hashes, that the acquisition matches their
11 verification hashes. We scan the computer for antivirus and
12 then we generally conduct keyword searches. So when I began my
13 forensic examination the first thing that I look at is the hash
14 values of the images. The hash values have to match because if
15 they don't match, then there is a problem with the image. The
16 hash values of the acquiring image and of the image that I
17 looked at matched. The primary tools that I use to examine
18 computers are ENCASE. I plug keywords into ENCASE and then I
19 search for keywords, I search both the allocated and the
20 unallocated spaces. Allocated space is places on the hard
21 drive, files that are created that you can see, such as a Word
22 document or e-mail. Unallocated space is places on the hard
23 drive which have not been used yet or it may contain deleted
24 files. I was also able to recover deleted files, because
25 deleted files are still on the hard drive until something is
26 written over top of them.
27

28 With respect to the [dot] .22 computer, I was given a
29 series of chat logs, they were statements concerning the
30 Department of State, JTF Guantánamo Bay Cuba, things like that,
31 so that is where I started my keyword list. The chat logs were
32 collected from Mr. Lamo, I was looking for things that were
33 identified in the chat logs. I did a search in the allocated
34 space, and I found four complete JTF Guantánamo Bay, Cuba
35 detainee assessments. I knew that they were detainee
36 assessments because I read them. They were under PFC Manning's
37 user profile. This computer had two web browsers on it,
38 Internet Explorer and Firefox. The configuration for the
39 Internet explorer web browser was a standard Army configuration
40 where the user could not clear the Internet history. The
41 Internet history on a Windows computer would be stored in a file
42 called index.dat. It stores Internet information as well as
43 files that were opened up on the computer. The other web
44 browser on the computer was Firefox, it was configured to have
45 Intelink as its homepage and to auto start private browsing when
46 it started.
47

1 I found a [dot] .zip file under PFC Manning's user profile
2 and inside of it were over ten thousand complete Department of
3 State cables, web pages. I also found an Excel spreadsheet, it
4 was a spreadsheet with three tabs, the first tab was WGET, the
5 second tab was 0310-0410, and the third tab was 0510. In the
6 second tab was Department of State message record numbers that
7 were published between March 2010 until April 2010, they were
8 sequential, whoever did this was obviously keeping track of
9 where they were, the first number was 251,288, and then a
10 sequential number after that. To my knowledge WikiLeaks has
11 released 251,287 cables. On a third tab it was all of the
12 Department of State cables that were published in May 2010. It
13 was just message record numbers not the full cable.
14

15 There was a WGET tab in there as well, it was over ten
16 thousand message record numbers, the second column was the
17 command line using WGET that downloaded that message record
18 number from the Department of State net centric server. The
19 first column is the message record number, and there's about ten
20 thousand there. The next column is a script, it's a
21 mathematical computation basically saying take everything that
22 is in column A and put it in column B, but in the right path.
23

24 The Investigating Officer stated that it would be easier to
25 understand if they were able to see the document that the
26 witness was talking about.
27

28 The trial counsel informed the Investigating Officer that
29 although the document is not classified it is currently marked
30 as classified and that is the reason why he was not able to
31 display the document in open court.
32

33 The defense counsel objected to all parties viewing the
34 document from the jury box stating that it would be better for
35 everyone to recess and reconvene tomorrow when the problem is
36 fixed.
37

38 The trial counsel stated that his direct line of
39 questioning would not take that much longer and requested to
40 continue with the questioning of this witness.
41

42 The Investigating Officer stated that it would be better
43 for all if the trial counsel just continued with his line of
44 questioning explaining the document in detail.
45

1 The trial counsel gave the document number to the
2 Investigating Officer so that he would be able to review it once
3 he went back to his chambers.

4
5 **The direct examination by Assistant Trial Counsel 1 continued as**
6 **follows:**

7
8 In Column B it is an Excel formula, to take what is in
9 Column A and put it in to a script so it could identify the
10 file. After you have all of column B filled, you would be able
11 to copy that column as text and put it in a batch file; and run
12 the batch file in a command script. There were about ten
13 thousand commands in that batch, and I saw those message record
14 numbers on the left, they were downloaded into the original zip
15 file I discussed earlier.

16
17 This is all under PFC Manning's user profile. In the
18 Windows prefetch folder there were several instances of WGET
19 being run. Prefetch is a Windows feature to speed up the
20 computer. The computer will identify programs that you use on a
21 regular basis, so the next time you run the program it will load
22 quicker. You can run that program WGET at the same time from
23 various locations; that way you will be able to download a lot
24 of files simultaneously.

25
26 WGET was in PFC Manning's profile, it appeared 4 May 2010.
27 It was not the first time that he used that file because there
28 were prefetch files predate that. Within the Windows temp
29 folder there were two files, these files each contained
30 approximately 100 complete Department of State cables, these
31 files were in CSV format and they contained a base 64 encoded
32 version of the cables. A CSV file is a Comma Separated Value.
33 It is just a way of moving files from one database to another.
34 Base 64 is an encoding scheme, it transforms data and documents
35 into a different format. Someone would do that to streamline
36 the process of taking the cables out; it took away all the
37 punctuation, all the spacing, and just put the information in
38 straight base 64. I found evidence in the unallocated space; I
39 identified thousands of the State Department complete cables.
40 They were unclassified or secret. They were not all complete.

41
42 Other information that I found relating to detainee
43 information was ISNs, the Internment Serial Numbers, which are a
44 unique pattern of characters. I did a search for them and I
45 found hundreds of documents with that convention. The ISN is
46 the internment serial number and is used as an identifier. I

1 found ISNs on PFC Manning's computer. They were found in the
2 index.dat file.
3

4 I am familiar with the charges and specifications. I found,
5 in the allocated space, the movie, actually several movies; one
6 was the released version from WikiLeaks and there was another
7 version which appeared to be the source file for it. The first
8 instance of that video being there was March, through
9 examination of the restore points I was able to determine that.
10 Restore point is another Microsoft feature and they are created
11 when an operating system is updated or program is installed so
12 if there's a problem with the computer you can go back in time
13 and get your computer to work again.
14

15 I do recognize that image, this is a screenshot of the
16 ENCASE program displaying from left to right the filename which
17 is the restore point, the middle column shows you the 12 July
18 2007 CZ engagement zone file was present under PFC Manning's
19 profile. I believe the first time it was viewed was 2 March
20 2010. There were no restore points before the month of March
21 due to the fact that the computer had problems and it was
22 reimaged prior to that.
23

24 I found information relating to an investigation done on a
25 military operation in Afghanistan. Within the index.dat file
26 there were hundreds of files which appeared to be part of the
27 incident, and I recovered deleted PDFs and JPEG images
28 pertaining to the Gharani incident. That is an image of the
29 index.dat which I put into an Excel spreadsheet for ease of
30 viewing. It is just a snippet of it. From left to right you
31 have the date column and to the right of that you have the URL,
32 what sites were visited. The date is April 10, 2010, says
33 Bradley.Manning as a file. That means that it is a file on the
34 computer not a website and then you continue reading and it
35 gives the path. It appears that somebody using the
36 Bradley.Manning user profile downloaded a large number files
37 concerning the Farah incident and at the end created a
38 Farah.zip. All of this was time sequential. In unallocated
39 space I recovered numerous JPEG images and PDF files, they
40 appear to be from presentations, screenshots of presentations,
41 pictures from aircraft, reconnaissance over the combat zone.
42

43 [The witness was temporarily excused, duly warned, and
44 withdrew from the courtroom.]
45

46 [The Article 32 hearing recessed at 1834, 18 December
47 2011.]

1
2 [The Article 32 hearing was called to order at 0934, 19
3 December 2011.]

4
5 The Investigating Officer called the hearing to order, and
6 stated that all parties present prior to the recess were once
7 again present.

8
9 **SPECIAL AGENT DAVID SHAVER, Civilian, was recalled as a witness**
10 **for the prosecution, was reminded that he was still under oath,**
11 **and testified in substance as follows:**

12
13 **CROSS-EXAMINATION**

14
15 **Questions by the civilian defense counsel:**

16
17 I did the computer forensics on both of the computers that
18 were sent to my office that PFC Manning used. I did not do a
19 bit by bit analysis of all the SIPR computers in the SCIF. I do
20 not know the total number of SIPR computers in the SCIF. I do
21 not know if the program WGET was on the other computers.

22
23 WGET is a program that is used for data mining, a key job
24 for analysts is to do data mining. Yesterday I stated that
25 WikiLeaks released over 250,000 cables. And during my analysis
26 I found diplomatic cables in the file called files.zip, that
27 file was found in allocated computer space. I did not compare
28 the cables that I found in the file with the cables that were on
29 the WikiLeaks website. None of those cables that I found in the
30 files.zip folder were on the WikiLeaks website. The computer
31 that I found these cables on was a SIPR computer. I was not
32 aware that analysts were directed to look at these cables. I
33 was not aware that no password was required to access these
34 files. I did not know that there was no prohibition for any
35 analyst to download these files.

36
37 Generally, you cannot date and timestamp things that are in
38 the unallocated space. And with unallocated space there is
39 nothing that you can tie to one particular user. I found the
40 video that has been called the Apache video; it was on one of
41 the SIPR computers. I did not know that the Apache video was a
42 topic of discussion among the analysts at FOB Hammer. I did not
43 know that these analysts were talking about and watching this
44 certain video back in December 2009. If a file has been deleted
45 and the space that was allocated and has been written over I
46 cannot find out what that file was. I testified that WGET was
47 used to download hundreds of files onto the allocated space of

1 the computer. In the allocated space I found four detainee
2 assessments, and in the unallocated space I found zero.

BEDIBECT EXAMINATION

Questions by Assistant Trial Counsel 1:

The cables in the files.zip folder were not released.

OBJECTION

The defense counsel objected to the line of questioning stating it was cause for speculation.

The Investigating Officer overruled the defense's objection.

The redirect examination by the trial counsel continued as follows:

When the files.zip was created there was something wrong, there was a problem with it, if a person using WinZip tried to open it, it would not open because it was a corrupted file. So you would need special tools in order to open the files in that zip folder.

OBJECTION

The defense counsel objected stating the trial counsel was asking leading questions.

The Investigating Officer sustained the objection.

The redirect examination by the trial counsel continued as follows:

I did find files related to the Farah investigation in the unallocated space. I found four detainee assessments in the allocated space. I did find evidence of the detainee assessments in the index.dat file folder. The detainees have a unique naming system, the ISN, I looked for the pattern for that and there were hundreds of those in the index.dat. The index.dat file is a Microsoft file used to log all of the websites and files viewed by the user.

RECROSS-EXAMINATION

Questions by the civilian defense counsel:

I was not able to open the form of file on unallocated space. I testified that the files.zip folder was corrupted I was not able to tell when it was corrupted.

The Investigating Officer closed the courtroom.

[The Article 32 hearing recessed at 1012, 19 December 2011.]

[The Article 32 hearing was called to order at 1016, 19 December 2011.]

The Investigating Officer opened the courtroom.

SPECIAL AGENT DAVID SHAVER, Civilian, was called as a witness for the prosecution, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

Questions by assistant trial counsel 1:

An IP address is an Internet protocol address. It is a unique set of numbers that is assigned to a computer so that it can talk on the network. The [dot] .40 machine was the machine that PFC Manning's user profile was on. That was his secondary computer. I verified the acquisition and verification hashes, the hashes matched. Then I scanned it with antivirus, then I conducted my examination.

The configuration of this computer was that it was a classified computer, a Windows operating system on the Army domain. It has CD burning tools, it had Roxio that was installed on the computer. Roxio is CD burning software. Roxio was on the other computer, the [dot] .22 computer that also had PFC Manning's user profile on it. USB ports were disabled for storage, it is an Army policy. On both computers the USB ports were disabled. When you burn a disk using Roxio, the CD has to be named and it was named by date. This image is an artifact, the naming of a CD that I burned when I re-created, I turned the [dot] .22 computer into a virtual machine. A virtual machine is a bit by bit image of a computer, it converts it to a running computer within your computer which acts as a host, so it is running virtually in the memory of the host computer. I wanted to verify that a CD could be burned from this computer and so I

1 turned it into a virtual machine, logged on as a user and then I
2 burned a disc.
3

4 My investigative plan for the[dot] .40 computer was the
5 same thing as the [dot] .22, to see if there were any
6 Department of State cables, see if there were any Guantánamo Bay
7 detainee assessments on there. I approached it the same way.
8 In the unallocated space I located a deleted CSV file containing
9 over 100,000 complete Department of State cables, which had been
10 converted to Base 64 format. A CSV is a Comma Separated Value;
11 it is just a way of transferring data from one database to
12 another area. The utility of a CSV is a common format, and
13 between each field there is a comma. Base 64 is just a way of
14 encoding information, the benefit for it in this case would be
15 to remove all of the characters, all of the grammatical
16 characters. When something is base 64 encoded it looks like, to
17 the untrained eye, gibberish. I found more than 100,000 full
18 cables.
19

20 The image is a very small portion of the recovered CSV
21 file, and what I've done for this one is, to keep it presentable
22 in open court; I filtered it on some of the unclassified
23 Department of State cables. On the left, the first field would
24 be the numbers, the person who was doing this wanted to ensure
25 that he obtained all of them, so each one of them had a unique
26 number. The second field is the date of when it was published,
27 when the actual cable itself was published on the Department of
28 State server, this is the Message Record Number, MRN. A message
29 record number is how the Department of State labels their
30 cables. And to the right of that is the base 64 stuff that I
31 spoke of. There is a reverse process to decode base 64. It
32 presents the information in plain text. And I was able to
33 decode these cables.
34

35 I found this deleted CSV in unallocated space, but I could
36 not associate that with a user profile. You can decode manually
37 one at a time, but that would be very time-consuming and prone
38 to errors. Through scripting you can create an automated process
39 to decode for you in a very quick manner. I did not find a
40 script to decode it on this computer. I did not find any other
41 data sets on the [dot] .40 computer.
42

43 I do recognize that image, which is the warning banner for
44 the computers, [dot] .22 and the [dot] .40 computers. When you
45 first start the computer and try to log on, you are presented
46 with this warning banner. The first sentence states, "You are
47 accessing a US government (USG) information system that is

1 provided for US government authorized use only." When a user
2 first logs on to the computers that I examined, you're first
3 prompted with this warning screen and then you have to press
4 okay.

5

6 **CROSS-EXAMINATION**

7

8 **Questions by the civilian defense counsel:**

9

10 The CSV file that I just discussed was in unallocated
11 space, so I cannot say that it was PFC Manning that accessed
12 this information. I do not know whether usernames and passwords
13 were shared at the T-SCIF on FOB Hammer. The unallocated space
14 with the cables cannot be date and time stamped. I found this
15 information on a classified computer; there is nothing wrong
16 with this information being on a classified computer. I did not
17 find any forensic evidence that this information was sent to
18 anyone.

19

20 [The witness was temporarily excused, duly warned, and
21 withdrew from the courtroom.]

22

23 **SPECIALIST ERIC BAKER, U.S. Army, was called as a witness for**
24 **the prosecution, was sworn, and testified in substance as**
25 **follows:**

26

27 **DIRECT EXAMINATION**

28

29 **Questions by Assistant Trial Counsel 2:**

30

31 I'm assigned to the 62nd MP Detachment at Ft. Drum, New
32 York. Currently I am an investigator on the drug suppression
33 team; I am a military police officer, 31B. I have been the Army
34 for 3 years and 11 months; I have been an MP the whole time. I
35 know PFC Manning because he was my roommate in Iraq, and he was
36 in my unit, HHC, 2nd Brigade, 10th Mountain. I first met PFC
37 Manning October 2008 before deployment. Yes, we went on both of
38 the JRTC rotations together. I think one was in October and then
39 I don't know when the other one was.

40

41 The first JRTC rotation was October 2008; we were training
42 for Afghanistan, and then the second one we were training for
43 was Iraq. We didn't have too much interaction at all during the
44 deployment; we were just roommates. I noticed that PFC Manning
45 would use the computer quite often, basically any chance that he
46 could get he would be on the computer, I never noticed what was
47 on his screen. I do not remember exactly when PFC Manning went

1 on his mid-tour leave but I do know that it was two weeks before
2 I took mid-tour leave which I took at the end of January.

4 My mid-tour leave lasted from the end of January until the
5 beginning of March. He was alone in our CHU for most of
6 February. PFC Manning had a MacBook Pro, a microphone, an
7 external hard drive, and a iPod Touch. I had a laptop and an
8 external hard drive for my movies. I never used his computer;
9 he had his iPod touch, and some of the CDs which were out of the
10 plastic wrap, and I'm not sure what type of CDs they were. I
11 did not have any rewritable CDs inside of our CHU, I never
12 brought CDs that were marked secret into our trailer, I never
13 marked anything secret inside of our trailer.

OBJECTION

The defense counsel objected to the line of questioning stating relevance.

Assistant Trial Counsel 2 stated it goes to the accused's state of mind.

The Investigating Officer overruled the objection.

The direct examination by Assistant Trial Counsel 2 continued as follows:

I didn't know too much about his feelings in the military,
but I do know that he planned on getting out of the military. I
remember him mentioning that the military was not for him.

CROSS-EXAMINATION

34 Questions by the civilian defense counsel:

36 Since I was the last lower enlisted to get FOB Hammer, the
37 First Sergeant told me that was the only room available for me.
38 Even though PFC Manning and I were roommates we were not
39 friends, we hardly ever talked. One of the first things that
40 PFC Manning spoke about gave me the impression that he was gay,
41 and after that I told him it would probably be better if we just
42 didn't talk to each other. When PFC Manning was not at work he
43 was in the room on his computer, the only people that I seen him
44 associate with were the ones that he worked with and that was
45 only during chow time. I do have a laptop and an external hard
46 drive, I did not have any CDs I could have if I wanted to but I
47 chose not. I went on mid-tour at the end of January, and it

1 came back the beginning of March. I do not know exactly when he
2 came back. PFC Manning made the statement to me that he did not
3 think the Army was for him, when he made that statement I did
4 not think that he said it because he was gay.
5

6 [The witness was permanently excused, duly warned, and
7 withdrew from the courtroom.]
8

9 **MARK JOHNSON, Civilian, was called as a witness for the**
10 **prosecution, was sworn, and testified in substance as follows:**
11

12 **DIRECT EXAMINATION**
13

14 **Questions by Assistant Trial Counsel 1:**
15

16 I work for Army Computer Crimes Investigative Unit; I began
17 working for them in June 2006. I am not a special agent for
18 CCIU, I am a contractor, and I work for Man tech International.
19 I am a computer forensic examiner, I'm assigned to the digital
20 forensics and research branch, my supervisor is Special Agent
21 David Shaver. Before working for them I worked for a different
22 defense contractor, in information assurance and network
23 operations. I have been through the defense cyber crimes
24 curriculum that includes a number of courses; I'm certified as a
25 digital media collector, the forensic examiner, and the computer
26 crimes investigator. The Defense Cyber Crimes Center is also
27 known as DC3. I am a certified information systems security
28 professional, also known as CISSP.
29

30 I examined a forensic image obtained from PFC Manning's
31 personal laptop computer; it was an Apple Mac Book Pro. After I
32 received the forensic image we validated the MD5 hash that was
33 included within that to verify that it had not been changed and
34 that it was the correct image. I verified that image. The
35 normal procedure for me after that would be to run an antivirus
36 scan to ensure that there was nothing on it that didn't belong
37 there. Once we completed that then we will begin our
38 examinations depending upon what we are looking for. In this
39 case we were looking for two specific things, we were looking
40 for evidence of Internet chats. We were also looking for
41 classified information or US government information.
42

43 The first thing that I did since I knew that I was looking
44 for Internet chats I looked for the presence of instant
45 messaging programs on his computer, and I found the installation
46 of Adium, it is a chat program designed for the Mac is a multi-
47 protocol Internet chat program that works with a number of

1 different applications. Multiprotocol means that it works with
2 different networks, so you can sign in on Adium and chat under
3 any number of instant messenger usernames. We would be able to
4 see the profile for Private Manning if he had it configured and
5 if it was configured if any logs were associated with the
6 account. We found chats, chat logs in question here were with
7 Mr. Adrian Lamo. I do recognize that image this is a screenshot
8 of the chat logs that we recovered from PFC Manning's machine.
9 This chat is between PFC Manning and Adrian Lamo.

10
11 The defense counsel requested a brief conference.

The Investigating Officer granted the defense counsel's request.

[The Article 32 hearing was recessed to order at 1046, 19 December 2011.]

[The Article 32 hearing was called to order at 1343, 19 December 2011.]

21
22 The Investigating Officer called the hearing to order.

DIRECT EXAMINATION

29 Questions by Assistant Trial Counsel 1:

31 The username of the two personnel in the chat logs as I can
32 recall was bradass87 referring to Bradley Manning, and Adrian
33 for Adrian Lamo.

OBJECTION

37 The defense counsel objected to the line of questioning
38 stating the witness was making an assumption as to who the
39 username belonged to.

The Investigating Officer sustained the objection.

42
43 The direct examination by Assistant Trial Counsel 1 continued as
44 follows:

The content was of various topics, WikiLeaks, government information, as well as topics related to general interest. I

1 also found a buddy list, Adrian was listed in there, and we also
2 found one named Press Association. The alias that is associated
3 with Press Association at the time was Julian Assange.
4

5 I do recognize that image, it is a screenshot of the buddy
6 list in the XML file for Adium. DawgNetwork@jabber.CCC.de, this
7 refers to the account Manning was using on his computer to
8 communicate. The Press Association is the recipient or the name
9 in the buddy list and the alias is the name that was associated
10 with that it, that nickname if you will. This was in the
11 allocated space.
12

13 In the un-allocated space we found the alias Nathaniel
14 Frank which is also associated with Press Association. Once we
15 found that we looked for other references to the press
16 Association account on his computer in conjunction with
17 Nathaniel Frank. We found a large collection of further Adium
18 logs in unallocated space with that combination. These were
19 chat logs between Bradley Manning and Press Association with the
20 alias Nathaniel Frank.
21

22 Adium stores its logs in XML format and the version in the
23 unallocated space was in that format. The substance of the chat
24 was predominantly discussions of government information and
25 specifically receiving or sending the information. And these
26 chats were found in unallocated space, there was a date
27 associated with these chats but I do not recall. This is a
28 screenshot of a cleaned up version of the logs that were in
29 unallocated space, without cleaning it up you are able to read
30 but it would be hard to understand. What you see here is the
31 spreadsheet version of the chat logs, the headings have been
32 bolded for readability. We were able to extract between 14 and
33 16 pages of chat logs. I read the chats, and the people in the
34 chats seemed to be familiar with each other. In the chats they
35 did discuss WikiLeaks, and various other things that I do not
36 recall at this time.
37

38 I did find evidence of connections between other computers,
39 in both the chats with Nathaniel Frank and the previous ones we
40 had noticed the conversation about SFTP, it is a function of the
41 SSH communication protocol used for transferring files, it
42 stands for secure file transfer protocol. SSH is a way of
43 communicating with a remote computer using an encrypted
44 communication point. When we did this we found in the Bradley
45 Manning home folder, the known host file SSH in his home
46 profile. This is a screenshot of that known host file obtained
47 from Bradley Manning's computer. That is an IP address on the

1 top left, that particular IP address resolves to the ownership
2 of PRQ, our investigation revealed that it is an ISP based in
3 Sweden which is known to be affiliated with WikiLeaks. The
4 second IP address resolves back to Verizon communications and
5 through our investigation we traced it back to Bradley Manning's
6 aunt. Once we found those IP addresses we looked for other
7 references to those addresses, we did find some in unallocated
8 space which referenced back to the collateral murder video.
9

10 Thunderbird is a client e-mail program for various
11 operating systems to include OS X. An e-mail cache keeps a copy
12 of local e-mail from your online account; PFC Manning's online
13 account was a Gmail account. We looked through his e-mail cache
14 and found a number of PGP encrypted e-mails, PGP stands for,
15 "Pretty good privacy," it provides encrypted e-mail messages.
16 There are affiliated versions such as GPG and open GP. I believe
17 GPG is Gnu Privacy Group. PFC Manning sent Eric Schmiedl an
18 encrypted message using GPG. I found one encrypted message
19 between PFC Manning and Eric Schmiedl. There were also messages
20 unencrypted between PFC Manning and Eric Schmiedl. The
21 unencrypted message was a failed act by PFC Manning to enable
22 the encryption. In order to read a message I needed to have and
23 obtain PFC Manning's private key and also the password to unlock
24 the private key. With that I was able to do read the email.
25 The password was the same as his PGP, as well as the OS ten. He
26 has his computer set to automatically log himself on so because
27 of that I was able to access his information through forensics.
28 His password was TWINK1492!!.. When I typed it in I was able to
29 receive the output text.
30

31 Macbook Pro had a way to insert CDs, we found that a number
32 of CDs have been burned and erased over time. This is a
33 screenshot of the disk utility log maintained by the Mac OS
34 system it shows where a CD rewritable media had been burned and
35 where it had been erased. I cannot tell what kind of files were
36 on the CDs. During the investigation a CD had been found in PFC
37 Manning's housing unit that contained a file name, "The
38 engagement zone," we looked for that same string on his hard
39 drive and we found that name in conjunction with the string, it
40 was a CD that was marked secret. In OSX, in order to attach a
41 disc of any kind to the system it has to have a mounting point.
42 Mac uses this last volume as that mount point name, think of it
43 as a starting point of the directory. We wanted to see what
44 other discs may have been attached to this computer at some
45 point so we looked for the string, "Volumes," and we found
46 evidence of this. This is a screenshot of the unallocated space
47 of what I just explained; in the next section would be the disc

1 name and the file. The last part is the file name. We found a
2 list of disks and also a list of files that were attached at the
3 time. This is a screenshot of an output of some of the volumes
4 that we found in unallocated space that references that string.
5 All these have to have a name of some sort in the Mac OS, the
6 next thing after that would be your disk name. If a user had
7 not specified a disk name that would be the exact same way that
8 Roxio would do it. The date of the first disc would be February
9 15, 2010. Then following the disk name you would have path and
10 file name for whatever was on a particular optical media. The
11 disc names were found to be a match to the same discs that were
12 burned on the SIPR computers. The last volumes record in this
13 screenshot is files.zip. That was burned May 4, 2010. This was
14 found in the unallocated space, which means that it was deleted.
15 The allocated and unallocated space on the Mac is similar to
16 that on windows. We exported out the unallocated space and we
17 examined it in a forensic tool to attempt to identify files that
18 may have existed in that space at one point. HTML is the
19 language of the web, the webpage if you will. These HTML files
20 were of web pages obtained for the Net Centric Diplomacy
21 website, otherwise known as the Department of State cables. I
22 recognize this image; this is an unclassified cable that we
23 obtained from Private Manning's laptop in unallocated space. We
24 have various terms down here that would be consistent with the
25 cable; we have an Embassy name in part of the MRN number. This
26 particular cable is unclassified but we did find numerous
27 references for other cables from unclassified through secret. I
28 searched further for MRNs on this computer; we identified
29 approximately 16,000 unique MRN numbers in unallocated space on
30 the computer.

31
32 We found CSV files in the unallocated space. I found a
33 script, which is a miniature program designed in this particular
34 case to process input files to output files. It appeared to be
35 a PHP formatted script, PHP is a scripting language more
36 commonly used on web servers but it can also be used on a
37 standalone computer. I recognize this image, it is a screenshot
38 of a script that we found in unallocated space, in this
39 particular case it is designed to take an input file and output
40 a comma separated value file. In this case HTML formatted files
41 and the output would be comma separated values. Once we found
42 this script we exported out this script and then we put it into
43 an environment so we could execute it in the same environment
44 that PVT Manning would have. We were able to boot his hard
45 drive using our investigative Mac, an alternate boot if you
46 will. We ran the script and it outputted the CSV file as
47 expected when provided with an input file of cables provided by

1 Special Agent Shaver. The input came from the classified cables
2 on the SIPRNET.
3

4 I recognize this image, that is a screenshot that we
5 obtained during the execution of this script. For each line,
6 every time it processes a cable it outputs sort of a status line
7 to the console screen. We found web pages in the unallocated
8 space referencing the WikiLeaks upload page. We found what
9 appears to be status or progress excerpts, this is a collection
10 of URLs on the WikiLeaks upload webpage with an upload
11 identifier. I recognize this image, this is the progress
12 screen, it is all in unallocated space as you can clearly see
13 the URL being used. We found additional references to the same
14 progress for the remaining parts. This image is a screenshot of
15 the files that we were able to find in unallocated space on a
16 status screen. This is a cleaned up copy, and information on
17 the left is like I just described it. A rar archive file format
18 is designed to take multiple input files and consolidate them
19 into a single archive, and it can also compress them, it is very
20 similar to zip format which is more commonly seen. The
21 extension at the end, NC is commonly used with the Mcrypt
22 program. Mcrypt is a program designed to encrypt data. This
23 image is a screenshot taken from the allocated space, which
24 indicated the command used to execute the m crypt program. AES
25 stands for advanced encryption standard, it is a highly secure
26 encryption algorithm developed by an open competition on the
27 net. I found other references to the rar archive on the
28 computer, we found references to it in conjunction with
29 unallocated space, but it is a path pointing to Private
30 Manning's desktop. We extracted the UC from everything else
31 using a tool called steg carver, which is a tool to examine a
32 file or component of other files. It is designed to find files
33 within other files. Using this tool we found remnants of a rar
34 archive, it was corrupted and in unallocated space, which is not
35 uncommon, but by executing the repair function within the winrar
36 program we were able to recover it enough to open the contents.
37 It appeared to be some discussions of a military nature, a
38 briefing, it was clearly marked classified. We also found these
39 pictures on the SIPR computer.
40

41 We found a text based file in unallocated space, a string,
42 it appeared to be a tasker, something they wanted to obtain was
43 a global address list for Iraq. The image is the tasker that I
44 just described. I found other evidence of the global address
45 list on PFC Manning's computer; I found a number of exchange
46 formatted e-mail addresses in the unallocated space as well,
47 thousands of them. We found several items that were on the

1 WikiLeaks website that were also on PFC Manning's personal
2 computer in the unallocated space of his computer. There was
3 evidence that his computer had been wiped or erased, first the
4 machine had been wiped in January 2010, during that time the
5 operating system had been reinstalled. We found references to a
6 disk utility log that indicated that the unallocated space had
7 been erased in later January, but it had not been completed.
8 What that means is that everything on the computer had been
9 erased and written over before 25 January 2010, and the
10 unallocated space had been erased and written over on 31
11 January 2010.

13 The witness authenticated the following documents:

14
15 00409680
16 00409681
17 00409682
18 00409683

CROSS-EXAMINATION

Questions by the assistant defense counsel:

I am certified in computer forensics through DC3. My work generally is with Windows-based products; prior to this case I have never done computer forensics on an Apple computer. PFC Manning's personal computer did not require a check card login, it was set to automatically log on, and it is possible that anyone could have had access to his computer.

I only examined his personal laptop; I did not discover any evidence that the global address list was released. During my work I do take notes, that is my customary practice. I did the work at Fort Belvoir, Virginia. I don't recall who specifically assigned me to this case but my supervisor is Special Agent Shaver.

OBJECTION

Assistant Trial Counsel 1 objected to the line of questioning stating basis.

43 The defense counsel stated that there was a basis due to
44 the witness's extensive work that he has done on this case.

46 The Investigating Officer sustained the objection.

1 The cross-examination by the assistant defense counsel continued
2 as follows:

4 I may have come across references in allocated space to web
5 pages, and things of that nature about PFC Manning's gender
6 identity disorder but we were not looking for that information.
7 My understanding is that PFC Manning had an alter ego by the
8 name of Breanna Manning. As to the chat logs I mentioned user
9 profiles but I do not know who was doing the actual chatting.

[The witness was temporarily excused, duly warned, and withdrew from the courtroom.]

14 SPECIAL AGENT DAVID SHAVER, Civilian, was recalled as a witness
15 for the prosecution, was reminded of his oath, and testified in
16 substance as follows:

DIRECT EXAMINATION

19 Questions by the Assistant Trial Counsel 1:

I am familiar with the SD card that was found in PFC Manning's aunt's house, I did an examination of that media. The investigative plan for that media was the same as before; however, I did the image of this one and created a forensic bit by bit image, again I verified that the hash values matched the acquisition, I worked off that image file. In the unallocated space deleted space, I recovered over 100,000 CIDNE document reports concerning both Iraq and Afghanistan. I found some deleted photos and movies of PFC Manning. In the allocated space on the card, there was only one file in the allocated space I believe that it was called, "Yada.tar.bz2.nc." I was able to decrypt the file, it contained four files, two CSV files, one containing the CIDNE database reports for Afghanistan about 91,000 individual reports, the next CSV was all of the CIDNE Iraq reports, approximately 400,000, a temporary file, and a readme.txt. I decrypted the file using the password that Mark Johnson had identified from examination of PFC Manning's personal computer, the password was, "Twinkl492!!." I simply took the program and told it to decrypt the file using that password. These are screenshots of everything that I just explained to you.

43 I had the opportunity to compare the reports from the CSV
44 files that I found to the reports posted by WikiLeaks. Although
45 I didn't do a line by line comparison, it appears that these
46 were the source files that were released. The ones that were

1 released were slightly less Iraq ones, a few thousand less, and
2 there was only 75,000 released from the Afghanistan theater.
3

4 The witness authenticated the following documents:
5

6 00376856
7 00409685
8 00409684
9 00409686
10 00409718
11

12 The defense counsel stated that they were missing the
13 document ending in 9684.
14

15 The trial counsel stated that they would be able to get the
16 document to them and that the defense has been in possession of
17 them for over a month.
18

CROSS-EXAMINATION

19 **Questions by the assistant defense counsel:**
20

21 I believe that we got the search authorization to search
22 the SD card December last year. I do not know how it got to his
23 aunt's house; I obtained it in the U.S. I do not know who
24 handled this SD card between the time of PFC Manning's arrest
25 and the date that I obtained it.
26

27 [The witness was temporarily excused, duly warned, and
28 withdrew from the courtroom.]
29

30 **MARK JOHNSON, Civilian, was recalled as a witness for the
31 prosecution, reminded of his oath, and testified in substance as
32 follows:**

DIRECT EXAMINATION

33 **Questions by the assistant trial counsel:**
34

35 I examined other pieces of media related to this case, a
36 forensic image of an external hard drive obtained from Private
37 Manning. I think it was found in his CHU. On the external hard
38 drive I found some information of a FOUO nature and a text file.
39 There was also a text file that was found on the drive as well,
40 it appeared to be contact information.
41

42 [The witness was temporarily excused, duly warned, and
43 withdrew from the courtroom.]
44

1 [The Article 32 hearing was recessed at 1446, 19 December
2 2011.]

4 [The Article 32 hearing was called to order at 1510, 19
5 December 2011.]

7 The Investigating Officer called the hearing to order.

9 **SPECIAL AGENT DAVID SHAVER, Civilian, was recalled as a witness**
10 **for the prosecution, was reminded of his oath, and testified in**
11 **substance as follows:**

13 **DIRECT EXAMINATION**

15 **Questions by Assistant Trial Counsel 1:**

17 I am familiar with Centaur, it is a net flow log. A net
18 flow log is a part of the intrusion defense system, it captures
19 IP addresses, times and dates. It captures connections between
20 two different computers. There is a sensor somewhere on the
21 network to capture the traffic, it just captures data, log
22 files. It will tell you how much data transferred between the
23 sensors. I examined a Centaur log in this case, we collected
24 Centaur logs for the time period of [dot] .22 and [dot] [dot]
25 .40, and those are the IP addresses for PFC Manning's SIPRNET
26 computers.

27 **OBJECTION**

30 The defense counsel objected to the witness's testimony
31 that the [dot] .22 and the [dot] .40 were PFC Manning's
32 computers.

34 The Investigating Officer sustained the objection.

36 **The direct examination by the Assistant Trial Counsel 1**
37 **continued as follows:**

39 The [dot] .22 and the [dot] .40 were SIPRNET computers that
40 were located in the SCIF where PFC Manning worked, and other
41 users could log on to those computers. My investigative plan
42 for the log files were since it was net flow data I would see
43 which computers and how many times and how much data was
44 transferred between the [dot] .22 and [dot] .40 and other
45 government computers. I sorted the excel spreadsheet from the
46 highest transfer data at the top and working its way down. From
47 the logs that I created it I have the top 15 listed on this
48 Excel spreadsheet.

1 I was the forensic examiner responsible for examining the
2 Department of State logs; I collected two sets of logs. The
3 first set was a set of fire wall logs, and the second set was a
4 set of Web server logs. A fire wall is a device which allows or
5 disallows network traffic. The log files were collected based on
6 an IP address, [dot] .22. The information that was captured in
7 the Department of State fire wall logs was only connections
8 there wasn't data transferred. I can just tell you that there
9 was communication between [dot] .22 and the net centric server.
10 The log files demonstrated a sort of pattern, I don't remember
11 the dates but some days there was a large amount of traffic and
12 other days there was not that much traffic. I cannot determine
13 how long the connections were for; I can just say that it was a
14 lot of connections. I counted that there was somewhere around
15 800,00 connections between the [dot] .22, the [dot] .40, and the
16 Department of State fire wall log, from approximately 7 March
17 until 3 May. There were some logs that were collected from the
18 Department of State logs as well. A large number of files were
19 downloaded to [dot] .22 using the WGET program, the timeframe
20 was from 3 to 4 May. There were not any server logs before
21 May, because there was a problem with the server and there was
22 no logging.

23
24 I examined CENTCOM logs in this case; the CENTCOM server in
25 Florida had hosted the Farah Afghanistan incident, the
26 investigation. Because of the examination of the index.dat
27 within PFC Manning's user profile on [dot] .22, there was a path
28 to a very specific folder structure throughout the SJA folder,
29 Investigations. So we were authorized to image those files that
30 were contained within that path, just the files in question, the
31 Farah investigation folder, underneath the SJA staff section.
32 Index.dat is a windows feature, a log file that captures URL or
33 file viewed within the user profile. I looked at that image, it
34 contained files and folders of a unique structure that were
35 similar to the files that were found on the CENTCOM server, the
36 Farah investigation folder, they were found in the index.dat
37 folder on PFC Manning's user profile. The examination of log
38 files, the CENTCOM log files are a little bit different, because
39 they were set to capture internal IP's not external IP's. It
40 was collecting the dates and times of files requested and the
41 files that were requested to be downloaded. I did an
42 examination of the log files and determined that with one of the
43 files, a power point presentation, it was identified in the
44 index.dat of PFC Manning's user profile on [dot] .22. That file
45 was only downloaded one time from the CENTCOM server, on 10

1 April 2010. On 10 April 2010, I saw hundreds of other files
2 being downloaded at the same time.
3

4 I examined the log files collected from the CIA, the
5 websites that were associated with these logs files were the
6 open source center and CIA wire. Open source center is CIA's
7 reporting on open source media, TV, documents. CIA wire is
8 their world intelligence review, their reports on various
9 matters, various topics. PFC Manning had an open source center
10 account, the username for that account was, "bradass87," the
11 audit logs captured the IP requesting the information, the
12 username requesting the information, the date, the time, and the
13 files viewed and files searched for. These were linked to a
14 SIPRNET email account. PFC Manning searched for keywords like
15 Iceland and WikiLeaks, about 30 times for each.
16

17 **CROSS-EXAMINATION**
18

19 **Questions by the assistant defense counsel:**
20

21 Regarding the Centaur logs, they covered the time period
22 approximately 1 October 2009 through the end of May 2010. For
23 me to get information from the Centaur logs I would have to
24 request it. We did not look at all of the computers in the T-
25 SCIF, we just filtered on the [dot] .22 and the [dot] .40 IP
26 addresses. The two workstations were accessing this information
27 and these workstations are classified workstations, and the
28 activity that was on those workstations were authorized, the
29 same with the Department of State logs.
30

31 The Farah folder I found three videos inside. I have
32 served previously in the military; Iraq is within the area of
33 operations of CENTCOM. The [dot] .22 and the [dot] .40
34 workstations are classified workstations, and an all source
35 analyst could have to access this to complete their job. It was
36 okay for an Intel analyst to look on these servers; they had
37 authorization to look into this data.
38

39 **REDIRECT EXAMINATION**
40

41 **Questions by the Assistant Trial Counsel 1:**
42

43 On the [dot] .22 and the [dot] .40 computers, PFC Manning
44 had a user account. In order to use that computer you had to
45 enter a password.
46

47 **RECROSS-EXAMINATION**

1
2 Questions by the assistant defense counsel:

4 More than one person was assigned to those computers.

[The Article 32 hearing was closed at 1537, 19 December 2011.]

[The Article 32 hearing was opened at 1605, 19 December 2011.]

The Investigating Officer opened the hearing, and the trial counsel stated that this portion of the hearing is unclassified.

SPECIAL AGENT DAVID SHAVER, Civilian, was recalled as a witness for the prosecution, was reminded of his oath, and testified in substance as follows:

DIRECT EXAMINATION

20 Questions by Assistant Trial Counsel 1:

I examined NIPRNET computers, which is the unclassified network; it was a U.S. Army computer that was in the SCIF the IP address ending in .139. This computer also required a username and password to logon. I used the same process to examine this computer as I did the other computers. I wanted to see what keyword searches were done on this computer and if any classified information was on this computer, I searched the entire computer. Under PFC Manning's user profile I didn't find any classified material, but he did searches for WikiLeaks and also for WGET.exe, and Base 64. These were Google searches on 3 May 2010; PFC Manning searched for WGET and downloaded the file to his profile. WGET was transferred from the NIPRNET to the SIPRNET on 4 May 2010, under PFC Manning's user profile.

CROSS-EXAMINATION

38 Questions by the assistant defense counsel:

39
40 Regarding the WGET program, it is used to gather data, it is a
41 data mining tool

OBJECTION

Assistant Trial Counsel 1 objected to the line of questioning stating that the witness has no basis for knowing what Intel Analysts do.

1 The Investigating Officer sustained the objection.
2
3

4 The defense counsel requested to revisit a line of
5 questioning with the witness.
6

7 **The cross-examination by the defense counsel continued as**
8 **follows:**
9

10 The activity pertains to the Farah folder, containing three
11 videos. This happened in April 2010, there is no evidence that
12 this activity took place prior to this date. I was aware that
13 WikiLeaks claimed to have possession of those videos in January
14 2010.
15

16 [The witness was temporarily excused, duly warned, and
17 withdrew from the courtroom.]
18

19 [The Article 32 hearing was recessed at 1613, 19 December
20 2011.]
21

22 [The Article 32 hearing was called to order at 0934, 20
23 December 2011.]
24

25 All parties present prior to the recess were again present
26 in the hearing.
27

28 **JIRLEAH SHOWMAN, Civilian, was called as a telephonic witness**
29 **for the government, was sworn and testified in substance as**
30 **follows:**
31

DIRECT EXAMINATION

32 **Questions by the assistant trial counsel:**
33

34 I am Jirleah Showman of Syracuse, New York. I left the
35 Army in the rank of Specialist on 25 June 2011 after serving 4
36 years and 2 months. I was in the same unit and intelligence
37 shop with PFC Manning. I was also his team leader. I first met
38 the accused when I arrived in the unit in March 2009. We were
39 both 35F MOS. I attended AIT at Fort Huachuca, Arizona in July
40 2007. I was trained as an all source analyst on how to handle,
41 disseminate and destroy classified information. I also received
42 training on all of the computer systems we use to gather
43 intelligence. You need at least an interim SECRET clearance in
44 order to initiate training. I attended some training with the
45 accused at the Division Headquarters prior to JRTC. We both
46
47

1 attended the JRTC rotation for Iraq. I deployed with the
2 accused to Iraq in October 2009 where we both worked in the
3 Brigade TSCIF on FOB Hammer. I worked directly with the accused
4 for the first two months as NCOIC of the night shift. The
5 accused was a Shia analyst. He would gather intelligence
6 information for products and projects that would be placed on
7 the Brigade shared drive for use by the Brigade Commander.
8

9 We used DCGS as a tool to do our job but we also used CPOF
10 strictly to communicate with the Battalions and the Companies.
11 I don't know what WGET is. I never used that to do my job. The
12 accused always had computer issues on a weekly or bi-weekly
13 basis. The DCGS contractor would have to correct his system
14 before it crashed. The accused left the Brigade SCIF on 9 May
15 2011, the morning after he assaulted me. He was removed for
16 punching me in the face and displayed uncontrollable and
17 untrustworthy behavior. I worked with the accused in a
18 supervisory capacity during the first few weeks of the
19 deployment.
20

21 The trial counsel announced the defense requested a closed
22 unclassified session. The government requested a closure
23 determination hearing.
24

25 The Investigating Officer closed the hearing.
26

27 [The Article 32 hearing recessed at 0947, 20 December
28 2011.]
29

30 [The Article 32 hearing was called to order at 0952, 20
31 December 2011.]
32

33 The Investigating Officer announced this was an
34 unclassified closed session; and the parties present were
35 counsel for both sides, hearing security officer, the accused,
36 personnel detailed to the defense and prosecution teams,
37 representative of relevant government agencies, and the
38 Investigating Officer's Legal Advisor and support staff.
39

40 The Investigating Officer announced the defense requested a
41 closed session to discuss disloyal statements made by the
42 accused to the witness that would be prejudicial if heard in an
43 open forum, which was denied.
44

45 The Investigating Officer announced he would reconsider the
46 denial.
47

Both parties maintained the previous positions submitted to the Investigating Officer for consideration.

The Investigating Officer placed his findings on the record reversing the denial of the defense request to close the hearing citing the accused's right to a fair trial was an overriding interest.

JIRLEAH SHOWMAN, Civilian, was recalled as a telephonic witness for the government, was reminded of her previous oath, and testified in substance as follows:

DIRECT EXAMINATION

Questions by Assistant Trial Counsel 2:

I discussed PFC Manning's opinion about the military with him. He told me he joined to earn money for college and to get computer knowledge and training. When he was asked what the U.S. flag meant to him he said it did not mean anything to him and he held no allegiance to this country or its people.

CROSS-EXAMINATION

Questions by the defense counsel:

That conversation took place during a verbal counseling session between me and PFC Manning. It was during a counseling session; his behavior initially indicated that he didn't care what I was saying; I wouldn't say that he was happy about being counseled. He was rarely happy, and I do not know if his mood changed during the counseling session. PFC Manning showed a lack of respect towards anything that occurred. I do agree that at the time I was counseling him he was not happy. I was trying to see where he was coming from, so I asked him why he joined the Army, and that is when he responded to the flag meant nothing to him and he no allegiance to the United States. I was upset when he said that, I raised my voice, but I do not remember exactly what I said. I believe I said that he had no business joining the military. I don't know PFC Manning's intentions for anything he said. I am not sure if he was saying not to push my buttons. Regardless it was something that he knew not to say. That is not a joking matter for an Intel analyst. I told Master Sergeant Adkins that I did not trust PFC Manning and he should not deploy with us. I was not aware that Master Sergeant Adkins denied hearing it from me. It does surprise me that he denied me telling him that.

1
2 **EXAMINATION BY THE INVESTIGATING OFFICER**
3

4 **Questions by the Investigating Officer:**
5

6 This conversation took place following the JRTC rotation
7 within months of us deploying.
8

9 [The Article 32 hearing recessed at 1004, 20 December
10 2011.]
11

12 [The Article 32 hearing was called to order at 1013, 20
13 December 2011.]
14

15 The Investigating Officer opened the hearing, and stated
16 that the closed session determination will be put on the record.
17

18 **JIRLEAH SHOWMAN, Civilian, was recalled as a witness for the
19 prosecution, was reminded of her previous oath, and testified in
20 substance as follows:**
21

22 **CROSS-EXAMINATION**
23

24 **Questions by the civilian defense counsel:**
25

26 I supervised PFC Manning before deploying; I became his
27 supervisor in March 2009. I had daily contact with PFC Manning.
28 There was an incident in where he did not show up for PT. I
29 went to his room to find out where he was. When I got there he
30 appeared to have just woken up; he was still in civilian
31 clothes. I told him to get dressed and to get downstairs right
32 away. He walked from his barracks room to formation. PFC
33 Manning did not respond to anything that I was telling him. I
34 asked him why he was not in formation. I do not remember him
35 responding to anything that I was telling him. I had to counsel
36 him and require him to show up early to formations for
37 corrective training. PFC Manning screamed and started jumping
38 up and down, flapping his arms. He was extremely loud, swinging
39 his hands around. His body language was very aggressive. I
40 stepped back from him. His screaming lasted several seconds.
41 Master Sergeant Adkins approached PFC Manning and then he
42 quieted down. PFC Manning was frustrated. Master Sergeant
43 Adkins asked PFC Manning what the problem was, and PFC Manning
44 responded that he was frustrated. PFC Manning said that he did
45 not like to mess up, I counseled him after that incident. I
46 also recommended UCMJ action, because he disrespected Master
47 Sergeant Adkins and me. He lost his military bearing. Master

1 Sergeant Adkins recommended UCMJ but he did not follow up on
2 those.

4 Following that incident, I required PFC Manning to go to
5 behavioral health. To my knowledge, no one in the chain of
6 command alerted the Commander of the incident. I recommended to
7 Master Sergeant Adkins that further action was needed and PFC
8 Manning was a threat and he should not be handling classified
9 information and should not deploy.

OBJECTION

13 The trial counsel objected to the line of questioning
14 stating lack of foundation.

16 The civilian defense counsel replied that the purpose of an
17 Article 32 hearing is discovery for the defense.

19 The Investigating Officer informed the civilian defense
20 counsel to limit his line of questioning.

22 The cross-examination by the civilian defense counsel continued
23 as follows:

25 I do not know if Master Sergeant Adkins informed the
26 Commander. I believe PFC Manning was unstable as one of the
27 reasons why he should not deploy. I saw PFC Manning freeze when
28 he was asked a question by the Lieutenant. He was
29 nonresponsive. I asked him what was wrong and he didn't speak.
30 I felt he was not processing what I had said. I told Master
31 Sergeant Adkins what happened. We both asked PFC Manning what
32 was going on. PFC Manning said he felt paranoid and people were
33 listening to his conversations. He did not trust anyone in the
34 unit or around him. He said he was not suicidal and did not
35 want to hurt himself. I asked him if he heard voices he said
36 no. I was trying to determine if he had. I am not a medic, but
37 I was trying to see if he had psychotic issues. He had an
38 elevated level of paranoia.

40 PFC Manning was not functioning in the office. He was not
41 able to do simple tasks. I confronted him about not getting
42 work done. He used the excuse for being tasked for a cleanup
43 detail. He showed no indication of gender identity disorder.
44 Based on all of this I recommended to Master Sergeant Adkins
45 that PFC Manning not deploy or have access to classified
46 information. Master Sergeant Adkins told me he spoke to someone
47 but I do not know if it was the commander. I told Master

1 Sergeant Adkins that PFC Manning should be command directed to
2 behavioral health, but it did not happen. I was not happy when
3 PFC Manning's name was on the list to deploy. I talked to
4 Master Sergeant Adkins again and was told the decision was made
5 and I had to deal with it.
6

7 We deployed to Iraq on 11 October 2009. I was the night
8 shift NCOIC of the T-SCIF. I had PFC Manning and PFC Cooley
9 under me. Master Sergeant Adkins decided who would be on
10 dayshift, but I could be wrong. Master Sergeant Adkins was the
11 overall NCOIC. He decided who would be on the nightshift. We
12 did not have much say over the Soldiers we were in charge of.
13 Everything went through Master Sergeant Adkins. Master Sergeant
14 Adkins oversaw all equipment and Soldiers. Soldiers were not
15 being counseled as they should have been. Major Clausen was the
16 Brigade S2. He was not in the SCIF and was in his office. CW2
17 Hack did not have the authority to counsel me. I was counseled
18 by Master Sergeant Adkins. I was counseled once during the
19 entire deployment.
20

21 I witnessed the incident between PFC Manning and SPC
22 Padgett. It happened towards the end of December. I heard PFC
23 Manning screaming. I walked to the door to see what was going
24 on. I saw PFC Manning on one side of the table and SPC Padgett
25 on the other. I saw PFC Manning flip the table. The computer
26 hit the ground. I found out later that it was broken. I saw
27 PFC Manning approach SPC Padgett, and he was trying to talk PFC
28 Manning down. PFC Manning looked around the room, he was about
29 to reach for an M4 rifle. CW2 Ehresman grabbed PFC Manning from
30 behind and locked his arms up. PFC Manning was in the full
31 nelson position. There was no formal punishment to my
32 knowledge; I don't know why. I told Master Sergeant Adkins
33 about the incident and told Master Sergeant Adkins that PFC
34 Manning had no business in the SCIF.
35

36 I know what the DEROG process is. We have a responsibility
37 to report DEROG information. When PFC Manning's clearance was
38 suspended I helped the Commander file the paperwork. To
39 initiate a DEROG the Commander will indicate what the action was
40 that lead to the DEROG, make a recommendation, and check a box
41 if the individual clearance should be suspended or terminated.
42 I felt they tried to keep everything that happened within the S2
43 internal. The incident between PFC Manning and SPC Padgett
44 should not have remained in house. The 1SG found out about the
45 incident from CW2 Hack. PFC Manning and I had to go see 1SG.
46 After seeing 1SG, a short time later in the deployment I saw PFC

1 Manning rolled up in a ball. I reported it to CW2 Ehresman. I
2 told him to be ready for something to happen.
3

4 I left the TSCIF at the end of my shift. I was called back
5 there around midnight. I was assaulted by PFC Manning. I stood
6 up and pinned him to the ground after he hit me. PFC Manning
7 told me he was scared of what behavioral health would find out
8 and that he would be removed from the Army.
9

10 I found what later became known as the *Collateral Murder*
11 video. I was going through some folders that belonged to the
12 fires section working for CW2 Hack. I came across the video
13 while I was training to improve professional development. Chief
14 and I watched the video and he would go over how his section
15 responded. Chief was grooming me to be a target analyst for
16 future deployments. There were other people that watched it
17 with us. They were discussing what we were seeing in the video.
18 There was no Rules of Engagement discussion that I recall.
19

20 **REDIRECT EXAMINATION**
21

22 **Questions by Assistant Trial Counsel 2:**
23

24 PFC Manning helped me put MIRC Chat on my computer. He had
25 the most knowledge of computers. I used it to talk to fellow
26 targeting sections. PFC Manning never told me he was chatting
27 with Julian Assange. We were never allowed to take classified
28 information outside of the SCIF. We all signed Nondisclosure
29 Agreements.

30 **RECROSS-EXAMINATION**
31

32 **Questions by the civilian defense counsel:**
33

34 I don't remember what regulation was behind the NDA.
35

36 [The witness was permanently excused, duly warned, and
37 ended the phone call.]
38

39 [The Article 32 hearing was recessed at 1055, 20 December
40 2011.]
41

42 [The Article 32 hearing was called to order at 1113, 20
43 December 2011.]
44

45 All parties present prior to the recess were once again
46 present.
47

1
2 STAFF SERGEANT PETER BIGELOW, U.S. Army, was called
3 telephonically as a witness for the prosecution, was sworn, and
4 testified in substance as follows:
5

6 DIRECT EXAMINATION
7

8 Questions by Assistant Trial Counsel 2:

9
10 I am currently assigned to AFSOUTH Battalion Naples Italy,
11 Army Element of NATO. I knew the PFC Manning in Iraq. He worked
12 for me after fight with Showman in the SCIF. I was the HHC
13 Brigade Supply Sergeant. He worked for me until May and he was
14 taken into custody. He came to work for me maybe in April. I
15 can't honestly tell you, but I know it was after the
16 altercation. I had a SIPR and NIPR computer in the supply room
17 and my personal laptop so I could search websites where the Army
18 blocked. My personal computer was used to help me do my job. I
19 did not log into PFC Manning's accounts, to include his AKO, his
20 gmail, and his Amazon account. I did not know any of his
21 passwords. I did not search for or view the WikiLeaks.org
22 website. I did not search for Julian Assange on the supply room
23 computer. I have not googled the Global Address List on the
24 supply room computer. I never downloaded emails on the
25 Iraq.centcom.mil domain. I only emailed the theatre PBO on the
26 NIPR computer.
27

28 CROSS-EXAMINATION
29

30 Questions by the civilian defense counsel:

31
32 My personal laptop was not password protected. I gave
33 instructions to check personal email on my laptop, but do not
34 download crazy or unauthorized sites on my laptop that could get
35 me in trouble. I never gave access to other Soldiers. My clerk
36 had access, but she had her own NIPR access. She went to her
37 room and used her personal computer. I don't know if she used
38 it when I was not there.
39

40 [The witness was permanently excused, duly warned, and
41 ended the phone call.]
42

43 SPECIAL AGENT ALFRED WILLIAMSON, U.S. Army, was called as a
44 witness for the prosecution, was sworn, and testified in
45 substance as follows:
46

47 DIRECT EXAMINATION

1
2 **Questions by the assistant trial counsel:**
3

4 I have been working for Army CCIU since September 2006. I
5 am a Digital Forensic Examiner; Special Agent David Shaver is my
6 supervisor. Prior to CCIU from 2002-2006 I worked for DHS
7 Customs. From 1992-2002 I was a Police officer in State of TX.
8 DHS training received Treasury CFP, 9 wks designated as a
9 computer forensic agent, Initial portion Comp TOD A+ curriculum.
10 DHS training, CCIU numerous DOD courses, DCITA 3 certifications
11 that DOD issued Comp T A plus NET T plus, MS Windows Tech, AC
12 Council certification. I observed digital media for this case,
13 Supply annex NIPR computer.
14

15 My process to verify image of computers was correct using
16 ENCASE, searching the medium. The initial search located user
17 account for PFC Manning and internet history under that profile,
18 it was created 21 May 2010. I located a Google search for the
19 terms WikiLeaks, open closed Article 15 hearing. Also, a web
20 history for a web page related to Article 15s. I was approached
21 by Special Agent Shaver to re-examine image of the computer to
22 specifically look for Iraq SharePoint exchange server's global
23 address list.
24

25 The second search I conducted located text files in the
26 computer of Staff Sergeant Bigelow's account. The files
27 contained .mil email addresses, unit names or email names. One
28 of the file located in the My Documents folder, remaining in
29 recycle bin to be recycled. 2 archive zip files. They used the
30 same naming convention, blah.zip. Inside those were text files
31 containing extracts of global address list. In the recycle bin
32 tmp.pdf 18 pages of UCMJ records, counseling statements and the
33 enlisted record portal. In Staff Sergeant Peter Bigelow's
34 account someone searched for Julian Assange, WikiLeaks, Global
35 Address List, macro outlook, and BDA text files. The last 3
36 that I mentioned were searches that indicated the user was
37 beginning to research a way to find and extract information from
38 the GAL and download it to a file. In Peter Bigelow's account
39 there was access to AKO for account profile. Access to PFC
40 Manning's G-mail account was also under that profile. The
41 webpage on computer was for amazon.com, the user was PFC
42 Manning. The Google search page login user was PFC Manning's G-
43 mail account. Invoice purchase order for a book, billing
44 information was for PFC Manning's Maryland address. As far as
45 the internet activity, AKO and G-mail located in index.dat file
46 which is an internet explorer history record. The searches for
47 the GAL were one of the first things then there were creation of

1 file done within a minute or two of the PFC Manning Gmail
2 account.

3

4 **CROSS-EXAMINATION**

5

6 **Questions by the assistant defense counsel:**

7

8 There were other pieces to the story, so I put them all
9 together. It was likely it was removed. Forensics can only say
10 it was created and saved forensics indicates it was removed, I
11 can't say definitely if it was. The searches were for gender
12 identity disorder, adjustment disorder was done on the Wikipedia
13 page. There was a book about feminine facial surgery. It was
14 shipped to PFC Manning's address in Maryland.

15

16 I prepared a report of findings on the Supply Annex NIPR
17 computer. I stand by the findings in the report. There are a
18 couple of ways to show that the accused account was created 21
19 May 2010. I can tell when an account was created using forensic
20 tools. You can tell when it was accessed by a user, which is
21 one thing. The Microsoft operating system have a tendency to
22 access a lot of files so it is difficult to say what someone may
23 claim is an access date.

24

25 [The witness was permanently excused, duly warned, and
26 withdrew from the courtroom.]

27

28 **SPECIAL AGENT DAVID SHAVER, Civilian, was recalled as a witness
29 for the prosecution, was reminded of his oath, and testified in
30 substance as follows:**

31 **DIRECT EXAMINATION**

32

33 **Questions by Assistant Trial Counsel 1:**

34

35 I examined a computer seized from Jason Katz. To my
36 knowledge he was a former employee of the Department of Energy.
37 I examined a work computer belonging to him, it was a Linux
38 computer, to determine if a file called b.zip was present on
39 that computer. I conducted my search the same as I did before
40 on the other computers. B.zip was a password protected zip
41 file. With the password I was able to open it, which I obtained
42 from another CCIU agent. In the zip file was a movie file, it
43 was an aircraft battlefield video. It was a part of the Farah
44 investigation folder; it was placed on the computer on 15
45 December 2009. I cannot determine if the user of the computer
46 got the password to view the file.

CROSS-EXAMINATION

Questions by the assistant defense counsel:

5 I have seen this video before; it took place in May 2009.
6 The video arrived on computer 15 December 2009. WikiLeaks had
7 similar video around that time frame the movie was the same. I
8 do not know date folder was placed on CENTCOM server. It is not
9 the same that is on the [dot] .22 computer, it is a different
10 video.

REDIRECT EXAMINATION

14 Questions by Assistant Trial Counsel 1:

16 The movie file was the same as the one on the CENTCOM
17 server. I know this because both were the same hash value and I
18 watched both videos.

[The witness was temporarily excused, duly warned, and withdrew from the courtroom.]

[The Article 32 hearing was recessed at 1151, 20 December 2011.]

[The Article 32 hearing was called to order at 1351, 20 December 2011.]

29 All parties present prior to the recess were again present
30 in the hearing.

Assistant Trial Counsel 1 moved to have the following documents considered by the Investigating Officer:

35 IA Exam (00375768-00375771)
36 IA Training requirement (00375772)
37 IA Virtual Training (00375773)
38 IA Virtual Training #2 (00375774)
39 Test Results (00022348)
40 Al-Qa'ida Recruiting Video (00408202-00408236)
41 Al-Qa'ida in the Arabian Peninsula Magazine (00012570-
42 00012571)

42 00012711)
43 Enemy #1 Possession Evidence
44 IIR 6 089 0563 11 (Redacted) (0041660-00410664)
45 Metadata display (00410658-00410659)
46 Forensic Ally Recovered Material (00410654-00410657)
47 C3 Document (00378141-003378147)

1
2 PFC Manning's Military Intelligence Work Product
3

4 Range Story Board (00410607-00410609)
5 SIPRNET Email dtd 100112 (00410613-00410614)
6 Multiple SIPRNET Email (004106132-00410618)
7 SIPRNET email dtd 0911130 (00410600-00410602)
8 Afghanistan War Logs Posted by WikiLeaks (00410668-
9 00410670)
10 IIR Bates 5 332 0069 10 (00410619-00410622)
11 Defense Info System Agency Doc
12 DISA Trickler Report (00410653)
13 CIDNE Data on the Internet (00410554)
14 NCD Valuation Documents (00410556-00410560)
15

16 The civilian defense counsel had no objection to the
17 documents being considered by the Investigating Officer.
18

19 **SPECIAL AGENT ANTONIO PATRICK EDWARDS, U.S. Army, was called as**
20 **a witness for the prosecution, was sworn, and testified in**
21 **substance as follows:**

22
23 DIRECT EXAMINATION
24

25 Questions by the trial counsel:
26

27 I am an investigator with CCIU of Army CID. I have been a
28 CID agent for a little bit longer than 3 and half years. I have
29 been involved in law enforcement for approximately 12 years. I
30 have had extensive training that qualifies me for this job. I
31 became involved in this case on 25 May 2010, when the CCIU
32 received an e-mail from Mr. Chet Uber. In the email Mr. Uber
33 related that he was aware of an individual who was in contact
34 with the United States Army, Military Intelligence Analyst, who
35 was releasing classified information to an Australian national
36 associated with WikiLeaks. I subsequently contacted Mr. Uber,
37 who put me in touch with Mr. Adrian Lamo, who confirmed he was
38 the individual in contact with the United States Army Military
39 Intelligence Analyst. I came in contact with him physically 11
40 June 2010. I met him in Carmichael, California. The general
41 nature of that meeting was to collect evidence pertaining to the
42 chat logs that he alluded to. I was able to collect one
43 removable hard drive that Mr. Lamo had in his possession. Also,
44 an HP mini laptop which had a hard drive in it, those devices
45 were then kept in my custody and returned to CCIU and turned
46 over to the forensics examiner for evaluation.
47

1 Mr. Lamo was a confidential informant for CID. He was to
2 collect whatever would assist us in the investigation. He was
3 given reasonable expense reimbursement. Information was
4 provided in exchange but it was not substantive to this
5 investigation. He is not a confidential informant. When Mr.
6 Lamo removed a hard drive, we purchased a hard drive in order to
7 not leave Lamo without a computer.

CROSS-EXAMINATION

11 Questions by the assistant defense counsel:

13 Mr. Lamo was confidential informant for CID the latter part
14 July 2010 and ended 3-4 months ago (August-September 2011). Mr.
15 Lamo consented to exam of both items. I concentrated my
16 investigation to specific search to chats and communications
17 with PFC Manning. I am familiar with a Mr. Danny Clark; I
18 attempted to interview him in Boston. I was not able to
19 interview him he invoked his right to counsel. Mr. Clark did
20 have communication with Mr. Lamo. Mr. Lamo provided a chat log
21 between him and Mr. Clark. No one from law enforcement
22 suggested communication between Mr. Clark and Mr. Lamo. If Mr.
23 Lamo communicated with Mr. Clark we wanted that information but
24 we also advised him to tread lightly. On 25 May 2010, I
25 communicated via phone with Mr. Lamo the conversation lasted
26 minutes. Basically, establishing he was the individual in
27 contact with the Army Intel analyst. We had periodic
28 communication with Lamo to set up stuff.

[The witness was permanently excused, duly warned, and withdrew from the courtroom.]

33 ADRIAN LAMO, Civilian, was called as a witness for the
34 prosecution. was sworn, and testified in substance as follows:

DIRECT EXAMINATION

38 Questions by the trial counsel:

My name is Adrian Lamo; I live in San Francisco, CA.

OBJECTION

44 The civilian defense counsel objected stating that the line
45 of questioning cause for speculation.

1 The direct examination by the trial counsel continued as
2 follows:

I communicated with bradass87; the emails were tied to 10th Mountain to where PFC Manning was stationed. I don't recall the [dot].mail address. But the other emails were from Bradley.e.manning@gmail.com. I responded to encrypted email. I could not read the encrypted emails because they had been enciphered using an outdated key. We made contact over AOL instant messenger on 20 May 2010. We used IM because it was encrypted using software called *Off The Record*. It is installed manually on certain clients and automatically on others. I use encryption because I value my privacy as a citizen. PFC Manning identified himself, when I asked them if they use Facebook and they indicated that although I could not search for their account because it was set up so that only their friends could see it. But they could search for mine, and I subsequently received a friend request additionally I was provided with authentication credentials for the AKO portal. I did not log into PFC Manning's AKO account. I sought verification because at that point he had made a number of claims that caused me to believe that I might be misled as to the identity of who I was speaking with and I desired verification of the identity of the remote party and the claims that they were making. We were chatting over a period of about 20 May through 26 May. The encryption key never changed. Special Agent Edwards responded to my reports of PFC Manning's actions and he came to California to interview me. I provided Special Agent Edwards with one 500 Gigabyte hard drive, a net book and hard drive and two thumb drives.

I did not alter the chat logs and I did not manipulate them either. I am aware of Jason Katz. I was informed by a user of a chat network there was an individual that was attempting to decrypt a video. And that they were using federally funded lab resources to do so. I have Asberger's Syndrome; it does not affect my memory. I have used drugs in the past. I did not use drugs when I was in contact with PFC Manning. My medicine regime allowed me to function normally. There is necessity to stay ahead of a story before it develops a life of its own to ensure the facts are correct. I have not received any compensation.

CROSS-EXAMINATION

46 Questions by the civilian defense counsel:

1 I have been convicted of a felony, in 2000, I did a string
2 of hacks against large companies, and in 2004 I was found guilty
3 of computer fraud. I received six months house arrest and 2 and
4 half months probation. I had to pay restitution as well. In
5 April 2010 I was involuntarily institutionalized. After I
6 called the police due to a dispute over the possession of my
7 medications, I thought someone stole my medications and my
8 backpack. I called the police and shortly after they arrived is
9 when I was institutionalized for nine days. I was released 7
10 May 2010.

11 I do computer work at odd jobs. I am not employed full
12 time. I am not receiving any benefits for my testimony today.
13 No promises have been made by the government, and I am not
14 receiving any money for my testimony. I am here to ensure the
15 truth is presented.

16 [The Article 32 hearing was recessed at 1425, 20 December
17 2011.]

18 [The Article 32 hearing was called to order at 1433, 20
19 December 2011.]

20 All parties that were present prior to the recess are once
21 again present.

22 **CROSS-EXAMINATION**

23 **Questions by the civilian defense counsel:**

24 We exchanged emails but I do not know the exact number.
25 The bulk of the emails were encrypted and not readable. I did
26 not read the emails. Instead we used AOL IM. It was my idea to
27 talk on AOL IM. We began chatting 20 May 2010, we chatted over
28 the next five days. I was living with my parents. I decided to
29 contact the Army authorities through a third party as to the
30 seriousness of the admissions made in the chats. At that time I
31 made communication about the communications that were made to
32 me.

33 The day after my first chat with badass87 what I saw in
34 the chats were egregious and required my response. The day
35 after my chats I reported them to law enforcement. I recall
36 chatting with Danny Clark on 21 July 2010. I contacted him
37 because I was curious about his role in the WikiLeaks affair. I
38 received no active direction to engage in anything to do with
39 WikiLeaks. The law enforcement officers stated that if I

1 observed any wrongdoing to report it. That if I saw or heard
2 anything to let them know. I emailed the chats to Agent
3 Edwards; I was not pounding on any doors. At that time I was
4 not working with law enforcement for the purpose of getting
5 information from Clark, until it was apparent that he was
6 involved in sensitive activity. I found it unusual that an
7 individual would install encryption software on an Army computer
8 and had to have a civilian to help him do it.
9

10 I was not familiar with the organizational structure of
11 WikiLeaks. From a professional perspective I am curious how
12 server was unsecured. I asked questions out of curiosity.
13 Curious individuals ultimately cooperate with law enforcement
14 officials. "BIT TORRENT" is a public peer to peer network.
15 Someone attempting to covertly share a file would not use this
16 as his first choice. There are a number of previous statements;
17 I am not sure whether it was by bradass87 or someone else. I
18 was asking all of these questions out of my own curiosity, I
19 have no particular love for law enforcement. I was working with
20 law enforcement when I asked PFC Manning those questions.
21

22 I have worked in journalism and when I see stories I pursue
23 them. I do see myself as a reporter. I have written some
24 articles that would qualify as journalism. There is a
25 requirement to protect confidential sources. At the time I
26 provided it, I was concerned by the depth of the unsurpassed
27 leakage evident in the admissions made.
28

29 "Off The Record" is an automated or manual encryption
30 service, you use it you are using it to encrypt your IM. The
31 individual that I was chatting with intended for this
32 information to remain confidential. The chat logs dealt with
33 sensitive subjects regarding bradass87. I believe they were
34 reaching out for a likeminded individual that would act as a
35 similar figure. I believe that the person that I was speaking
36 to was coming to me for motivation moral and emotional support.
37 I do not believe that they were looking for guidance so much as
38 they were looking to brag about what they had done. I do
39 consider myself to be a minister; I am recognized as a minister
40 in the Universal Life Church. A person might come to a minister
41 as a formal act of religion or a matter of conscience.
42

43 **REDIRECT EXAMINATION**
44

45 **Questions by the trial counsel:**
46

1 The first person that I met with after chatting with PFC
2 Manning was Timothy Douglas Webster. At that time he was a
3 student at U.C. Santa Barbara. He is not a member of the U.S.
4 Government. I met with a CID Agent or law enforcement officer.
5 I believe that it was the 23rd or the 24th, but I do not have it
6 marked on a calendar.

[The witness was permanently excused, duly warned, and withdrew from the courtroom.]

[The Article 32 hearing was recessed at 1518, 20 December 2011.]

[The Article 32 hearing was called to order at 1531, 20 December 2011.]

16
17 All parties that were present prior to the recess are once
18 again present.

SPECIAL AGENT DAVID SHAVER, Civilian, was recalled as a witness for the prosecution, was reminded of his oath, and testified in substance as follows:

DIRECT EXAMINATION

35 Questions by Assistant Trial Counsel 1:

I examined two computers, I imaged them, verified hash values, followed my normal procedures and I had a limited search for these pieces of media. I was only authorized to search for any communication between Mr. Lamo and bradass87. I found communications on the windows computer, there were four chat logs. On the Linux computer there were several files of copies of the chat logs which appear to have been slightly modified. I believe those were the ones that were released to the press. I compared the chat logs found on Mr. Lamo's computer to the ones found on PFC Manning's computer. At some point in time the chats on PFC Manning's computer had been enabled and from that point on they basically matched word for word.

[The witness was permanently excused, duly warned, and withdrew from the courtroom.]

42
43 SPECIAL AGENT TROY BETTENCOURT, U.S. Army, was recalled as a
44 witness for the prosecution, was reminded of his oath, and
45 testified in substance as follows:

DIRECT EXAMINATION

1
2 **Questions by Assistant Trial Counsel 1:**

3
4 I am familiar with phishing or spear phishing; it is an
5 attempt by an individual to gain personal information or
6 financial information from a victim through electronic
7 communication. Spear phishing is more targeted, they will get
8 more information on you so that it appears to be legitimate. To
9 make spear phishing more effective you need intelligence about
10 your target. If you are going to craft a message that somebody
11 is going to fall for, the more information that you know about
12 them to make it seem like it is a legitimate message the more
13 effective you will be. Spear phishing in most cases is done for
14 financial gain. The only way that we have seen is not through
15 the public but they have had some dissention within their ranks
16 and they have had people leave WikiLeaks and at some point Mr.
17 Assange had an NDA agreement drafted up for his employees.

18
19 **OBJECTION**

20
21 The civilian defense counsel objected to the witness's
22 testimony on the grounds of hearsay.

23
24 The Investigating Officer overruled the objection.

25
26 **The direct examination by the assistant trial counsel continued
27 as follows:**

28
29 Mr. Assange demanded his employees sign a NDA that they
30 would not disclose any of the information in the possession of
31 WikiLeaks.

32 **EXAMINATION BY THE ARTICLE 32 HEARING**

33 **Questions by the Investigating Officer:**

34
35 All of the information in possession of WikiLeaks is of
36 great value.

37
38 [The witness was permanently excused, duly warned, and
39 withdrew from the courtroom.]

40
41 The government rested.

42
43 [The Article 32 hearing was called to order at 0906, 21
44 December 2011.]

1 All parties present prior to the recess were again present
2 in the hearing.

4 The Investigating Officer advised the spectators
5 unauthorized or disruptive behavior would result in removal from
6 the courtroom.

8 SERGEANT DANIEL PADGETT, U.S. Army, was called as a witness for
9 the defense, was sworn and testified in substance as follows:

DIRECT EXAMINATION

Questions by the civilian defense counsel:

I am Sergeant Daniel Padgett of Bravo Company, 2d Brigade Special Troop Battalion, 2d Brigade, 10th Mountain Division (Light). I have been in the Army 3 years. I have prior service as a Marine from January 2001 through January 2005. My current MOS is 35L, Counter Intelligence Agent, but I was previously a 35F when I initially entered the Army. I am outprocessing from my current unit and will be PCSing next month.

I deployed to Iraq in October 2009. I was assigned as the night shift NCOIC in the TSCIF. I helped oversee operations and execute the missions at night. I took over that role shortly after we got in country and arrived at FOB Hammer. I never received any initial counseling from my supervisor. I had not attended any leadership schools at the time. I was told my responsibilities as the night shift NCOIC were to oversee the operations and to report anything that happened throughout the course of the shift that night. I supervised two other analysts, including the accused. I was not responsible for counseling the Soldiers initially, but I requested that authority to counsel later when the need arose. The leadership within the S2 section did not exercise much oversight. At the time, I had two duty assignments, so when I would come and go from the Brigade S2, the atmosphere was different regarding who was in the SCIF and how the shifts were structured. There was no clear chain of command. As far as the Brigade chain of command, I was not the accused's direct supervisor. The accused had his own Brigade chain of command. After an incident with the accused inside the SCIF, I went to the accused's direct supervisor, who worked day shift, and requested authorization to counsel the accused on the incident because it happened during my watch of the night shift; and it was granted.

1 The accused was late for duty and I wanted to formally
2 correct the accused. The first counseling session was December
3 2009. I was going over the importance of being on time at the
4 appointed place of duty in a deployed environment. During the
5 counseling session the accused got angry, flipped the table we
6 were sitting at and had to be restrained. The counseling
7 session took place in the Brigade S2 conference room. Once the
8 accused calmed down, we completed the counseling session and
9 cleaned up the conference room. After that, I don't recall what
10 happened. Initially the accused's body language was calm but
11 his demeanor changed as the counseling session went on. He
12 stared at me in a way that made me uncomfortable. Shortly after
13 that, the accused stood up, turned the table over, and the
14 equipment on the table went crashing to the ground. I never
15 noticed the accused approaching a weapons rack that had
16 contained weapons. I was very concerned about the accused at
17 the time possibly doing something to harm himself or anybody
18 else in the building that night. I placed my hands on the
19 accused's shoulder to shove him aside and CW2 Ehrisman grabbed
20 the accused in a full nelson type hold to prevent him from
21 grabbing a weapon. CW2 Ehrisman had the accused sit on a bench
22 until he calmed down.

23 After the incident was resolved, the accused was not
24 counseled for disrespect. The Brigade chain of command took
25 everything over after the incident. I talked to a few people in
26 the Brigade about what happened. I vaguely recall speaking to
27 Master Sergeant Adkins. I don't recall speaking to Major
28 Clausen, the Company First Sergeant or the Company Commander
29 about the incident. The accused never received UCMJ action for
30 the incident.

CROSS-EXAMINATION

35 Questions by Assistant Trial Counsel 2:

I attended 35F AIT at Fort Huachuca, Arizona where I learned how to handle confidential and classified information. I was trained on the importance of OPSEC and INFOSEC. I was trained about enemies of the United States and the consequences of compromising classified information and how it could be harmful to national security. I went to JRTC prior to the deployment to prepare. I worked in the Brigade S2 half of the time I was deployed. The accused worked in the SCIF as a Shia threat analyst. Inside the SCIF we used the DCGS, CIDNE and Tiger Net computer based tools to help us do our job. We did not use CIDNE-Afghanistan. We did not use the State Department

1 NETCENTRIC Diplomacy database. I don't know what WGET is, and I
2 have never used it. I never burned classified information onto
3 CDs for personal use. That was not authorized. I have, and the
4 accused should have, signed multiple non-disclosure agreements;
5 which tell you to safeguard classified information and the
6 consequences if you fail to do so. Every Soldier with a
7 security clearance has a personal responsibility to safeguard
8 classified information.

9

10 EXAMINATION BY THE ARTICLE 32 HEARING

11 Questions by the Investigating Officer:

12 We were told music was authorized inside the TSCIF. There
13 was music on the shared drive, and we could bring non-writable
14 music CDs into the SCIF to listen to. There were movies present
15 but we were only allowed to watch them on the unclassified
16 computer system only. There were a couple of games on the
17 shared drive on the SIPR terminals. When we arrived in country,
18 the games were already there on the shared drive but I don't
19 recall if they were removed.

20
21
22 There being no further questions by counsel for both sides,
23 the witness was permanently excused, duly warned and exited the
24 courtroom.
25

26 CAPTAIN BARCLAY KEAY, U.S. Army, was called as a telephonic
27 witness for the defense, was sworn and testified in substance as
28 follows:
29

30 DIRECT EXAMINATION

31 Questions by the civilian defense counsel:

32 My full name is Barclay David Keay. My current unit is
33 2B5TB Battalion in 2d Brigade, 10th Mountain. I was deployed to
34 Iraq in December 2009 directly out of the Captains Career
35 Course. I linked up with the 2d Brigade Combat Team at FOB
36 Hammer after they had completed RIP TOA in November 2009. This
37 was my second deployment, but first deployment in S2 intell.
38 Initially, I did not have an MTOE position. I was an S2 Captain
39 for about 5 or 6 weeks, but I eventually transitioned to my key
40 development position as the 4/31 Battalion S2. I was told I
41 was going to be the S2X but when I got there I was told I would
42 be the night OIC. My duties as the night OIC were to take over
43 whatever tasks the daytime duties were tackling. There was a
44 skeleton crew at night so we would aide in what the daytime guys
45
46
47

1 were doing. It was my first S2 position so I was reading a lot
2 to get my knowledge base up in preparation for my key
3 development position. I had 3 Soldiers on the night shift with
4 me, none of them being NCOs because, I assumed there were not
5 enough NCOs to go around. The primary focus was the day shift
6 when everything was happening and the key leaders and main
7 intell guys were awake to help the decision makers. The accused
8 was one of my Soldiers.
9

10 The ranks of the Soldiers on the night shift were all E4s,
11 which included the accused, Specialist Padgett and Specialist
12 Cooley. The night shift's taskings came from the day shift;
13 which were parts of brief or products that were being presented
14 to the senior leaders and decision makers. I was overseeing to
15 ensure the night Soldiers were doing what they were supposed to
16 do. Not sleeping but actually working and getting things done.
17 I spent a few weeks on the night shift then I moved to the day
18 shift and then ultimately transitioned to the Battalion S2
19 position. I started out on the night shift as an eye opening to
20 read and learn before they opened me up to daytime and then
21 down, ultimately to 4/31.
22

23 While I was the night shift OIC I noticed Soldiers
24 listening to music, or looking at video clips that were being
25 passed around. I sensed Soldiers were looking at movies but I
26 just personally didn't see any. I sensed Soldiers were playing
27 games but I just didn't catch them with their hands in the
28 cookie jar. I thought it was odd these activities were taking
29 place inside a SCIF and I inquired with the lower enlisted guys
30 why they did it and other S2 officers, but I can't remember,
31 specifically, who I might have asked. I remember walking in and
32 being surprised and not what I expected. I remember giving a
33 sworn statement to CID and to the SEC ARMY 15-6 Investigating
34 Officer investigating this event. There were two different
35 investigating crews that came down to Fort Drum and one of them
36 asked for a sworn statement. The question I was asked in the
37 sworn statement was, "Who did you ask about the appropriateness
38 of media on the SIPR side?" My answer to that question was, "I
39 asked lots of people because I didn't know what the right answer
40 was. I don't know if I ever went to Major Clausen, but I went
41 to my peers, Captain Martin, Staff Sergeant Balonek now CW2,
42 Second Lieutenant Fields and a bunch of analysts, to include
43 Manning, I think. I didn't get a specific answer, I just kept
44 asking." I asked around about this because it was my first
45 intel experience right out of the career course. Everything I
46 was told at the career course, I was trying to put into context
47 with what was going on and for my actual position. What I was

1 told at the course was media was not allowed or tolerated inside
2 the SCIF; nor was it when I worked in Huachuca. However, things
3 were different downrange. Music was tolerated so that Soldiers
4 could be more productive and it wasn't looked at as negatively
5 as I thought it was at first. So I just pushed it to the side
6 and did not think anything really of it. I remember thinking it
7 wasn't probably something we should be so liberal about. But I
8 did ask a few people. Coming in and listening to the music
9 inside the SCIF was an accepted practice.

10
11 After my time as night OIC in the SCIF, I went down to TOC
12 Carver just off FOB Hammer with the 4/31 Infantry Battalion was.
13 I took my new job on 1 January. There was no SCIF at my new
14 work location. We were on the back side of the TOC. There was
15 media there but it was not a TSCIF. I know what a SCIF looks
16 like now and there is no music while the Soldiers are working.
17 There are no unauthorized programs, music, games, or video games
18 on the SIPR computers.

19
20 From my perspective, I felt like the accused wanted to be a
21 good Soldier but I didn't know the depth behind this unit
22 beforehand. My initial impression was the accused wanted to try
23 and he did good analytical work.

24
25 There being no further questions by counsel for both sides,
26 the witness was permanently excused, duly warned and the phone
27 call was terminated.

28
29 The defense offered Investigating Officer Exhibit 21 for
30 consideration by the Investigating Officer without objection by
31 the government.

32
33 The defense rested.

34
35 The defense did not request the Investigating Officer
36 produce any additional witnesses other than the witnesses that
37 were previously requested and denied.

38
39 The defense did not request any witnesses be recalled by
40 the Investigating Officer for further cross-examination.

41
42 The accused declined to make any statement in his behalf to
43 the Investigating Officer.

44
45 The Investigating Officer closed the hearing for submission of
46 any additional evidence to be considered.

1 The defense objected to the hearing recessing for the day
2 and reconvening the following day, on the grounds all parties
3 should be prepared to deliver closing argument to the
4 Investigating Officer.

5 The Investigating Officer noted the defense objection.

6 The government responded to the defense objection citing
7 the reasons the government requested the break in hearing; and
8 all parties agreed during a prior closed conference with the
9 Investigating Officer.

10 The Investigating Officer noted the conference with all
11 parties present on 20 December 2011, which there was an
12 agreement by all parties to recess at the close of defense
13 evidence and to reconvene at 1000, 22 December 2011 to permit
14 counsel for both sides to prepare concluding arguments. The
15 government at a closed conference with all parties present held
16 prior to opening the current session, the government amended its
17 request to start at 0900, 22 December 2011. The Investigating
18 Officer stood on the previous agreement made by all parties and
19 modified the start time to 0900, 22 December 2011.

20 The defense responded the defense witnesses and documents
21 submitted were in possession of the government prior to the
22 Article 32. The defense entered into the agreement based on the
23 uncertainty of the defense presentation of evidence. The
24 defense noted the hearing recessed early and should reconvene at
25 1500 or 1600, 21 December 2011.

26 The Investigating Officer overruled the defense objection
27 and ordered the hearing would reconvene at 0900, 22 December
28 2011.

29 [The Article 32 hearing recessed at 0942, 21 December
30 2011.]

31 [The Article 32 hearing was called to order at 0902, 22
32 December 2011.]

33 All parties present prior to the recess were again present
34 in the hearing.

35 The Investigating Officer advised the spectators
36 unauthorized or disruptive behavior would result in removal from
37 the courtroom.

1 The civilian defense counsel made a concluding argument to
2 the Investigating Officer.

4 The trial counsel made a concluding argument to the
5 Investigating Officer.

The Investigating Officer re-advised the accused of the role of the Investigating Officer in the proceedings.

10 The Investigating Officer announced the proceedings were
11 closed.

[The Article 32 hearing closed at 1031, 22 December 2011.]

[END OF PAGE.]

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).
9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).
10. Congressional inquiries and replies, if any.
11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.
12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.
13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).
14. Records of former trials.
15. Record of trial in the following order:
 - a. Errata sheet, if any.
 - b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
 - c. Record of proceedings in court, including Article 39(a) sessions, if any.
 - d. Authentication sheet, followed by certificate of correction, if any.
 - e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
 - f. Exhibits admitted in evidence.
 - g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
 - h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.